

House Study Bill 648

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE
DIVISION BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the regulation of securities, providing for
2 fees and penalties, and providing an effective date.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 5212DP 80
5 da/gg/14

PAG LIN

1 1 DIVISION I
1 2 UNIFORM SECURITIES ACT
1 3 ARTICLE 1
1 4 GENERAL PROVISIONS
1 5 Section 1. Section 502.102, Code Supplement 2003, is
1 6 amended by striking the section and inserting in lieu thereof
1 7 the following:
1 8 502.102 DEFINITIONS.
1 9 In this chapter, unless the context otherwise requires:
1 10 1. "Administrator" means the commissioner of insurance or
1 11 the deputy appointed pursuant to section 502.601.
1 12 2. "Agent" means an individual, other than a broker=
1 13 dealer, who represents a broker=dealer in effecting or
1 14 attempting to effect purchases or sales of securities or
1 15 represents an issuer in effecting or attempting to effect
1 16 purchases or sales of the issuer's securities. But a partner,
1 17 officer, or director of a broker=dealer or issuer, or an
1 18 individual having a similar status or performing similar
1 19 functions, is an agent only if the individual otherwise comes
1 20 within the term. The term does not include an individual
1 21 excluded by rule adopted or order issued under this chapter.
1 22 2A. "Agricultural cooperative association" means an entity
1 23 which is structured and operated on a cooperative basis
1 24 pursuant to 26 U.S.C. } 1381(a) and which meets the
1 25 definitional requirement of an association as provided in 12
1 26 U.S.C. } 1141j(c) or 7 U.S.C. } 291, if the association is
1 27 organized as any one of the following:
1 28 a. A farmers cooperative association as defined in section
1 29 10.1.
1 30 b. An association of persons organized pursuant to chapter
1 31 497 for purposes of conducting an agricultural or dairy
1 32 business on a cooperative plan, as described in section 497.1.
1 33 c. A cooperative association organized pursuant to chapter
1 34 498 for purposes of conducting an agricultural, livestock,
1 35 horticultural, or dairy business on a cooperative plan and
2 1 acting as a cooperative selling agency, as described in
2 2 section 498.2.
2 3 d. An agricultural association as defined in section 499.2
2 4 and organized pursuant to chapter 499.
2 5 e. A cooperative organized under chapter 501 which may
2 6 acquire or otherwise obtain or lease agricultural land in this
2 7 state as provided in section 501.103.
2 8 f. Any other entity which is organized on a cooperative
2 9 basis under the laws of this state for the purpose of engaging
2 10 in the activities of an agricultural association as defined in
2 11 section 499.2.
2 12 3. "Bank" means any of the following:
2 13 a. A banking institution organized under the laws of the
2 14 United States.
2 15 b. A member bank of the United States federal reserve
2 16 system.
2 17 c. Any other banking institution, whether incorporated or
2 18 not, doing business under the laws of a state or of the United
2 19 States, a substantial portion of the business of which
2 20 consists of receiving deposits or exercising fiduciary powers
2 21 similar to those permitted to be exercised by national banks
2 22 under the authority of the office of the comptroller of the

2 23 currency of the United States pursuant to Pub. L. No. 87=722,
2 24 } 1, 12 U.S.C. } 92a, and which is supervised and examined by
2 25 a state or federal agency having supervision over banks, and
2 26 which is not operated for the purpose of evading this chapter.
2 27 d. A receiver, conservator, or other liquidating agent of
2 28 any institution or firm included in paragraph "a", "b", or
2 29 "c".
2 30 4. "Broker=dealer" means a person engaged in the business
2 31 of effecting transactions in securities for the account of
2 32 others or for the person's own account. The term does not
2 33 include any of the following:
2 34 a. An agent.
2 35 b. An issuer.
3 1 c. A bank or savings institution if its activities as a
3 2 broker=dealer are limited to those specified in section
3 3 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if
3 4 limited to unsolicited transactions, and in subsections
3 5 3(a)(5)(B), and 3(a)(5)(C) of the Securities Exchange Act of
3 6 1934, 15 U.S.C. } 78c(a)(4) and (5); or a bank that satisfies
3 7 the conditions described in section 3(a)(4)(E) of the
3 8 Securities Exchange Act of 1934, 15 U.S.C. } 78c(a)(4).
3 9 d. An international banking institution.
3 10 e. A person excluded by rule adopted or order issued under
3 11 this chapter.
3 12 5. "Depository institution" means any of the following:
3 13 a. A bank.
3 14 b. A savings institution, trust company, credit union, or
3 15 similar institution that is organized or chartered under the
3 16 laws of a state or of the United States, authorized to receive
3 17 deposits, and supervised and examined by an official or agency
3 18 of a state or the United States if its deposits or share
3 19 accounts are insured to the maximum amount authorized by
3 20 statute by the federal deposit insurance corporation, the
3 21 national credit union share insurance fund, or a successor
3 22 authorized by federal law. The term does not include any of
3 23 the following:
3 24 (1) An insurance company or other organization primarily
3 25 engaged in the business of insurance.
3 26 (2) A Morris plan bank.
3 27 (3) An industrial loan company.
3 28 6. "Federal covered investment adviser" means a person
3 29 registered under the Investment Advisers Act of 1940.
3 30 7. "Federal covered security" means a security that is, or
3 31 upon completion of a transaction will be, a covered security
3 32 under section 18(b) of the Securities Act of 1933, 15 U.S.C. }
3 33 77r(b), or rules or regulations adopted pursuant to that
3 34 provision.
3 35 8. "Filing" means the receipt under this chapter of a
4 1 record by the administrator or a designee of the
4 2 administrator.
4 3 9. "Fraud", "deceit", and "defraud" are not limited to
4 4 common law deceit.
4 5 10. "Guaranteed" means guaranteed as to payment of all
4 6 principal and all interest.
4 7 11. "Institutional investor" means any of the following,
4 8 whether acting for itself or for others in a fiduciary
4 9 capacity:
4 10 a. A depository institution or international banking
4 11 institution.
4 12 b. An insurance company.
4 13 c. A separate account of an insurance company.
4 14 d. An investment company as defined in the Investment
4 15 Company Act of 1940.
4 16 e. A broker=dealer registered under the Securities
4 17 Exchange Act of 1934.
4 18 f. An employee pension, profit=sharing, or benefit plan if
4 19 the plan has total assets in excess of five million dollars or
4 20 its investment decisions are made by a named fiduciary, as
4 21 defined in the Employee Retirement Income Security Act of
4 22 1974, that is a broker=dealer registered under the Securities
4 23 Exchange Act of 1934, an investment adviser registered or
4 24 exempt from registration under the Investment Advisers Act of
4 25 1940, an investment adviser registered under this chapter, a
4 26 depository institution, or an insurance company.
4 27 g. A plan established and maintained by a state, a
4 28 political subdivision of a state, or an agency or
4 29 instrumentality of a state or a political subdivision of a
4 30 state for the benefit of its employees, if the plan has total
4 31 assets in excess of five million dollars or its investment
4 32 decisions are made by a duly designated public official or by
4 33 a named fiduciary, as defined in the Employee Retirement

4 34 Income Security Act of 1974, that is a broker=dealer
4 35 registered under the Securities Exchange Act of 1934, an
5 1 investment adviser registered or exempt from registration
5 2 under the Investment Advisers Act of 1940, an investment
5 3 adviser registered under this chapter, a depository
5 4 institution, or an insurance company.
5 5 h. A trust, if it has total assets in excess of five
5 6 million dollars, its trustee is a depository institution, and
5 7 its participants are exclusively plans of the types identified
5 8 in paragraph "f" or "g", regardless of the size of their
5 9 assets, except a trust that includes as participants self=
5 10 directed individual retirement accounts or similar self=
5 11 directed plans.
5 12 i. An organization described in section 501(c)(3) of the
5 13 Internal Revenue Code, 26 U.S.C. } 501(c)(3), corporation,
5 14 Massachusetts trust or similar business trust, limited
5 15 liability company, or partnership, not formed for the specific
5 16 purpose of acquiring the securities offered, with total assets
5 17 in excess of five million dollars.
5 18 j. A small business investment company licensed by the
5 19 small business administration under section 301(c) of the
5 20 Small Business Investment Act of 1958, 15 U.S.C. } 681(c),
5 21 with total assets in excess of five million dollars.
5 22 k. A private business development company as defined in
5 23 section 202(a)(22) of the Investment Advisers Act of 1940, 15
5 24 U.S.C. } 80b=2(a)(22), with total assets in excess of five
5 25 million dollars.
5 26 l. A federal covered investment adviser acting for its own
5 27 account.
5 28 m. A "qualified institutional buyer" as defined in Rule
5 29 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted by the
5 30 securities and exchange commission under the Securities Act of
5 31 1933, 17 C.F.R. } 230.144A.
5 32 n. A "major U.S. institutional investor" as defined in
5 33 Rule 15a=6(b)(4)(i) adopted by the securities and exchange
5 34 commission under the Securities Exchange Act of 1934, 17
5 35 C.F.R. } 240.15a=6.
6 1 o. Any other person, other than an individual, of
6 2 institutional character with total assets in excess of five
6 3 million dollars not organized for the specific purpose of
6 4 evading this chapter.
6 5 p. Any other person specified by rule adopted or order
6 6 issued under this chapter.
6 7 12. "Insurance company" means a company organized as an
6 8 insurance company whose primary business is writing insurance
6 9 or reinsuring risks underwritten by insurance companies and
6 10 which is subject to supervision by the insurance commissioner
6 11 or a similar official or agency of a state.
6 12 13. "Insured" means insured as to payment of all principal
6 13 and all interest.
6 14 13A. "Interest at the legal rate" means the interest rate
6 15 for judgments specified in section 535.3.
6 16 14. "International banking institution" means an
6 17 international financial institution of which the United States
6 18 is a member and whose securities are exempt from registration
6 19 under the Securities Act of 1933.
6 20 15. "Investment adviser" means a person that, for
6 21 compensation, engages in the business of advising others,
6 22 either directly or through publications or writings, as to the
6 23 value of securities or the advisability of investing in,
6 24 purchasing, or selling securities or that, for compensation
6 25 and as a part of a regular business, issues or promulgates
6 26 analyses or reports concerning securities. The term includes
6 27 a financial planner or other person that, as an integral
6 28 component of other financially related services, provides
6 29 investment advice to others for compensation as part of a
6 30 business or that holds itself out as providing investment
6 31 advice to others for compensation. The term does not include
6 32 any of the following:
6 33 a. An investment adviser representative.
6 34 b. A lawyer, accountant, engineer, or teacher whose
6 35 performance of investment advice is solely incidental to the
7 1 practice of the person's profession.
7 2 c. A broker=dealer or its agents whose performance of
7 3 investment advice is solely incidental to the conduct of
7 4 business as a broker=dealer and who does not receive special
7 5 compensation for the investment advice.
7 6 d. A publisher of a bona fide newspaper, news magazine, or
7 7 business or financial publication of general and regular
7 8 circulation.
7 9 e. A federal covered investment adviser.

7 10 f. A bank or savings institution.
7 11 g. Any other person that is excluded by the Investment
7 12 Advisers Act of 1940 from the definition of investment
7 13 adviser.
7 14 h. Any other person excluded by rule adopted or order
7 15 issued under this chapter.
7 16 16. "Investment adviser representative" means an
7 17 individual employed by or associated with an investment
7 18 adviser or federal covered investment adviser and who makes
7 19 any recommendations or otherwise gives investment advice
7 20 regarding securities, manages accounts or portfolios of
7 21 clients, determines which recommendation or advice regarding
7 22 securities should be given, provides investment advice or
7 23 holds oneself out as providing investment advice, receives
7 24 compensation to solicit, offer, or negotiate for the sale of
7 25 or for selling investment advice, or supervises employees who
7 26 perform any of the foregoing. The term does not include an
7 27 individual who does or is any of the following:
7 28 a. Performs only clerical or ministerial acts.
7 29 b. Is an agent whose performance of investment advice is
7 30 solely incidental to the individual acting as an agent and who
7 31 does not receive special compensation for investment advisory
7 32 services.
7 33 c. Is employed by or associated with a federal covered
7 34 investment adviser, unless the individual has a "place of
7 35 business" in this state as that term is defined by rule
8 1 adopted by the securities and exchange commission under
8 2 section 203A of the Investment Advisers Act of 1940, 15 U.S.C.
8 3 } 80b-3a, and is any of the following:
8 4 (1) An "investment adviser representative" as that term is
8 5 defined by rule adopted under section 203A of the Investment
8 6 Advisers Act of 1940, 15 U.S.C. } 80b-3a.
8 7 (2) Not a "supervised person" as that term is defined in
8 8 Section 202(a)(25) of the Investment Advisers Act of 1940, 15
8 9 U.S.C. } 80b-2(a)(25).
8 10 d. Is excluded by rule adopted or order issued under this
8 11 chapter.
8 12 17. "Issuer" means a person that issues or proposes to
8 13 issue a security, subject to all of the following:
8 14 a. The issuer of a voting trust certificate, collateral
8 15 trust certificate, certificate of deposit for a security, or
8 16 share in an investment company without a board of directors or
8 17 individuals performing similar functions is the person
8 18 performing the acts and assuming the duties of depositor or
8 19 manager pursuant to the trust or other agreement or instrument
8 20 under which the security is issued.
8 21 b. The issuer of an equipment trust certificate or similar
8 22 security serving the same purpose is the person by which the
8 23 property is or will be used or to which the property or
8 24 equipment is or will be leased or conditionally sold or that
8 25 is otherwise contractually responsible for assuring payment of
8 26 the certificate.
8 27 c. The issuer of a fractional undivided interest in an
8 28 oil, gas, or other mineral lease or in payments out of
8 29 production under a lease, right, or royalty is the owner of an
8 30 interest in the lease or in payments out of production under a
8 31 lease, right, or royalty, whether whole or fractional, that
8 32 creates fractional interests for the purpose of sale.
8 33 d. With respect to a viatical settlement contract,
8 34 "issuer" means a person involved in creating, transferring, or
8 35 selling to an investor any interest in such a contract,
9 1 including but not limited to fractional or pooled interests,
9 2 but does not include an agent or a broker-dealer.
9 3 18. "Nonissuer transaction" or "nonissuer distribution"
9 4 means a transaction or distribution not directly or indirectly
9 5 for the benefit of the issuer.
9 6 19. "Offer to purchase" includes an attempt or offer to
9 7 obtain, or solicitation of an offer to sell, a security or
9 8 interest in a security for value. The term does not include a
9 9 tender offer that is subject to section 14(d) of the
9 10 Securities Exchange Act of 1934, 15 U.S.C. } 78n(d).
9 11 20. "Person" means an individual; corporation; business
9 12 trust; estate; trust; partnership; limited liability company;
9 13 association; joint venture; government; governmental
9 14 subdivision, agency, or instrumentality; public corporation;
9 15 or any other legal or commercial entity.
9 16 21. "Place of business" of a broker-dealer, an investment
9 17 adviser, or a federal covered investment adviser means any of
9 18 the following:
9 19 a. An office at which the broker-dealer, investment
9 20 adviser, or federal covered investment adviser regularly

9 21 provides brokerage or investment advice or solicits, meets
9 22 with, or otherwise communicates with customers or clients.

9 23 b. Any other location that is held out to the general
9 24 public as a location at which the broker=dealer, investment
9 25 adviser, or federal covered investment adviser provides
9 26 brokerage or investment advice or solicits, meets with, or
9 27 otherwise communicates with customers or clients.

9 28 22. "Predecessor chapter" means this chapter as it existed
9 29 on December 31, 2004.

9 30 23. "Price amendment" means the amendment to a
9 31 registration statement filed under the Securities Act of 1933
9 32 or, if an amendment is not filed, the prospectus or prospectus
9 33 supplement filed under the Securities Act of 1933 that
9 34 includes a statement of the offering price, underwriting and
9 35 selling discounts or commissions, amount of proceeds,
10 1 conversion rates, call prices, and other matters dependent
10 2 upon the offering price.

10 3 24. "Principal place of business" of a broker=dealer or an
10 4 investment adviser means the executive office of the broker=
10 5 dealer or investment adviser from which the officers,
10 6 partners, or managers of the broker=dealer or investment
10 7 adviser direct, control, and coordinate the activities of the
10 8 broker=dealer or investment adviser.

10 9 25. "Record", except in the phrases "of record", "official
10 10 record", and "public record", means information that is
10 11 inscribed on a tangible medium or that is stored in an
10 12 electronic or other medium and is retrievable in perceivable
10 13 form.

10 14 26. "Sale" includes every contract of sale, contract to
10 15 sell, or disposition of, a security or interest in a security
10 16 for value, and "offer to sell" includes every attempt or offer
10 17 to dispose of, or solicitation of an offer to purchase, a
10 18 security or interest in a security for value. Both terms
10 19 include all of the following:

10 20 a. A security given or delivered with, or as a bonus on
10 21 account of, a purchase of securities or any other thing
10 22 constituting part of the subject of the purchase and having
10 23 been offered and sold for value.

10 24 b. A gift of assessable stock involving an offer and sale.

10 25 c. A sale or offer of a warrant or right to purchase or
10 26 subscribe to another security of the same or another issuer
10 27 and a sale or offer of a security that gives the holder a
10 28 present or future right or privilege to convert the security
10 29 into another security of the same or another issuer, including
10 30 an offer of the other security.

10 31 27. "Securities and exchange commission" means the United
10 32 States securities and exchange commission.

10 33 27A. "Securities bureau" means the securities bureau of
10 34 the insurance division of the department of commerce.

10 35 28. "Security" means a note; stock; treasury stock;
11 1 security future; bond; debenture; evidence of indebtedness;
11 2 certificate of interest or participation in a profit=sharing
11 3 agreement; collateral trust certificate; preorganization
11 4 certificate or subscription; transferable share; investment
11 5 contract; voting trust certificate; certificate of deposit for
11 6 a security; fractional undivided interest in oil, gas, or
11 7 other mineral rights; put, call, straddle, option, or
11 8 privilege on a security, certificate of deposit, or group or
11 9 index of securities, including an interest therein or based on
11 10 the value thereof; put, call, straddle, option, or privilege
11 11 entered into on a national securities exchange relating to
11 12 foreign currency; or, in general, an interest or instrument
11 13 commonly known as a "security"; or a certificate of interest
11 14 or participation in, temporary or interim certificate for,
11 15 receipt for, guarantee of, or warrant or right to subscribe to
11 16 or purchase, any of the foregoing. All of the following shall
11 17 apply to the term:

11 18 a. It includes both a certificated and an uncertificated
11 19 security.

11 20 b. It does not include an insurance or endowment policy or
11 21 annuity contract under which an insurance company promises to
11 22 pay a fixed or variable sum of money either in a lump sum or
11 23 periodically for life or other specified period.

11 24 c. It does not include any of the following:

11 25 (1) An interest in a contributory or noncontributory
11 26 pension or welfare plan subject to the Employee Retirement
11 27 Income Security Act of 1974.

11 28 (2) A certificate or tax credit issued or transferred
11 29 pursuant to chapter 15E, division VII.

11 30 d. It includes an investment in a common enterprise with
11 31 the expectation of profits to be derived primarily from the

11 32 efforts of a person other than the investor and a "common
11 33 enterprise" means an enterprise in which the fortunes of the
11 34 investor are interwoven with those of either the person
11 35 offering the investment, a third party, or other investors.

12 1 e. It includes as a security an interest in a limited
12 2 liability company or in a limited liability partnership or any
12 3 class or series of such interest, including any fractional or
12 4 other interest in such interest, provided "security" does not
12 5 include an interest in a limited liability company or a
12 6 limited liability partnership if the person claiming that such
12 7 an interest is not a security proves that all of the members
12 8 of the limited liability company or limited liability
12 9 partnership are actively engaged in the management of the
12 10 limited liability company or limited liability partnership;
12 11 provided that the evidence that members vote or have the right
12 12 to vote, or the right to information concerning the business
12 13 and affairs of the limited liability company or limited
12 14 liability partnership, or the right to participate in
12 15 management, shall not establish, without more, that all
12 16 members are actively engaged in the management of the limited
12 17 liability company or limited liability partnership.

12 18 f. It includes a viatical settlement investment contract.

12 19 29. "Self-regulatory organization" means a national
12 20 securities exchange registered under the Securities Exchange
12 21 Act of 1934, a national securities association of broker=
12 22 dealers registered under the Securities Exchange Act of 1934,
12 23 a clearing agency registered under the Securities Exchange Act
12 24 of 1934, or the municipal securities rulemaking board
12 25 established under the Securities Exchange Act of 1934.

12 26 30. "Sign" means, with present intent to authenticate or
12 27 adopt a record, to do any of the following:

12 28 a. To execute or adopt a tangible symbol.

12 29 b. To attach or logically associate with the record an
12 30 electronic symbol, sound, or process.

12 31 31. "State" means a state of the United States, the
12 32 District of Columbia, Puerto Rico, the United States Virgin
12 33 Islands, or any territory or insular possession subject to the
12 34 jurisdiction of the United States.

12 35 31A. "Viatical settlement investment contract" means a
13 1 contract entered into by a viatical settlement purchaser, to
13 2 which the viator is not a party, to purchase a life insurance
13 3 policy or an interest in the death benefits of a life
13 4 insurance policy, which contract is entered into for the
13 5 purpose of deriving economic benefit.

13 6 Sec. 2. NEW SECTION. 502.103 REFERENCES TO FEDERAL
13 7 STATUTES.

13 8 "Securities Act of 1933", 15 U.S.C. } 77a et seq. ;
13 9 "Securities Exchange Act of 1934", 15 U.S.C. } 78a et seq. ;
13 10 "Public Utility Holding Company Act of 1935", 15 U.S.C. } 79
13 11 et seq. ; "Investment Company Act of 1940", 15 U.S.C. } 80a=1
13 12 et seq. ; "Investment Advisers Act of 1940", 15 U.S.C. } 80b=1
13 13 et seq. ; "Employee Retirement Income Security Act of 1974", 29
13 14 U.S.C. } 1001 et seq. ; "National Housing Act", 12 U.S.C. }
13 15 1701; "Commodity Exchange Act", 7 U.S.C. } 1 et seq. ;
13 16 "Internal Revenue Code", 26 U.S.C. } 1 et seq. ; "Securities
13 17 Investor Protection Act of 1970", 15 U.S.C. } 78aaa et seq. ;
13 18 "Securities Litigation Uniform Standards Act of 1998", 112
13 19 Stat. 3227; "Small Business Investment Act of 1958", 15 U.S.C.
13 20 } 661 et seq. ; and "Electronic Signatures in Global and
13 21 National Commerce Act", 15 U.S.C. } 7001 et seq. mean those
13 22 federal statutes and the rules and regulations adopted under
13 23 those federal statutes, as in effect on the effective date of
13 24 this Act.

13 25 Sec. 3. NEW SECTION. 502.104 REFERENCES TO FEDERAL
13 26 AGENCIES.

13 27 A reference in this chapter to an agency or department of
13 28 the United States is also a reference to a successor agency or
13 29 department.

13 30 Sec. 4. NEW SECTION. 502.105 ELECTRONIC RECORDS AND
13 31 SIGNATURES.

13 32 This chapter modifies, limits, and supersedes the federal
13 33 Electronic Signatures in Global and National Commerce Act, but
13 34 does not modify, limit, or supersede } 101(c) of that Act, 15
13 35 U.S.C. } 7001(c), or authorize electronic delivery of any of
14 1 the notices described in section 103(b) of that Act, 15 U.S.C.
14 2 } 7003(b). This chapter authorizes the filing of records and
14 3 signatures, when specified by provisions of this chapter or by
14 4 a rule adopted or order issued under this chapter, in a manner
14 5 consistent with section 104(a) of that Act, 15 U.S.C. }
14 6 7004(a).

14 8

EXEMPTIONS FROM REGISTRATION OF SECURITIES

14 9 Sec. 5. Section 502.201, Code 2003, is amended by striking
14 10 the section and inserting in lieu thereof the following:

14 11 502.201 EXEMPT SECURITIES.

14 12 All of the following securities are exempt from the
14 13 requirements of sections 502.301 through 502.306 and 502.504:

14 14 1. UNITED STATES GOVERNMENT AND MUNICIPAL SECURITIES. A
14 15 security, including a revenue obligation or a separate
14 16 security as defined in rule 131, 17 C.F.R. } 230.131, adopted
14 17 by the securities and exchange commission under the Securities
14 18 Act of 1933, issued, insured, or guaranteed by the United
14 19 States; by a state; by a political subdivision of a state; by
14 20 a public authority, agency, or instrumentality of one or more
14 21 states; by a political subdivision of one or more states; or
14 22 by a person controlled or supervised by and acting as an
14 23 instrumentality of the United States under authority granted
14 24 by the Congress; or a certificate of deposit for any of the
14 25 foregoing.

14 26 2. FOREIGN GOVERNMENT SECURITIES. A security issued,
14 27 insured, or guaranteed by a foreign government with which the
14 28 United States maintains diplomatic relations, or any of its
14 29 political subdivisions, if the security is recognized as a
14 30 valid obligation by the issuer, insurer, or guarantor.

14 31 3. DEPOSITORY INSTITUTION AND INTERNATIONAL BANKING
14 32 INSTITUTION SECURITIES. A security issued by and representing
14 33 or that will represent an interest in or a direct obligation
14 34 of, or be guaranteed by any of the following:

14 35 a. An international banking institution.

15 1 b. A banking institution organized under the laws of the
15 2 United States; a member bank of the United States federal
15 3 reserve system; or a depository institution, a substantial
15 4 portion of the business of which consists or will consist of
15 5 receiving deposits or share accounts that are insured to the
15 6 maximum amount authorized by statute by the federal deposit
15 7 insurance corporation, the national credit union share
15 8 insurance fund, or a successor authorized by federal law or
15 9 exercising fiduciary powers that are similar to those
15 10 permitted for national banks under the authority of the
15 11 comptroller of the currency pursuant to Pub. L. No. 87=722, }
15 12 1, 12 U.S.C. } 92a.

15 13 c. Any other depository institution, unless by rule or
15 14 order the administrator proceeds under section 502.204.

15 15 4. INSURANCE COMPANY SECURITIES. A security issued by and
15 16 representing an interest in, or a debt of, or insured or
15 17 guaranteed by, an insurance company authorized to do business
15 18 in this state.

15 19 5. COMMON CARRIER AND PUBLIC UTILITY SECURITIES. A
15 20 security issued or guaranteed by a railroad, other common
15 21 carrier, public utility, or public utility holding company
15 22 that is any of the following:

15 23 a. Regulated in respect to its rates and charges by the
15 24 United States or a state.

15 25 b. Regulated in respect to the issuance or guarantee of
15 26 the security by the United States, a state, Canada, or a
15 27 Canadian province or territory.

15 28 c. A public utility holding company registered under the
15 29 Public Utility Holding Company Act of 1935 or a subsidiary of
15 30 such a registered holding company within the meaning of that
15 31 Act.

15 32 6. CERTAIN OPTIONS AND RIGHTS. A federal covered security
15 33 specified in section 18(b)(1) of the Securities Act of 1933,
15 34 15 U.S.C. } 77r(b)(1), or by rule adopted under that provision
15 35 or a security listed or approved for listing on another
16 1 securities market specified by rule under this chapter; a put
16 2 or a call option contract; a warrant; a subscription right on
16 3 or with respect to such securities; or an option or similar
16 4 derivative security on a security or an index of securities or
16 5 foreign currencies issued by a clearing agency registered
16 6 under the Securities Exchange Act of 1934 and listed or
16 7 designated for trading on a national securities exchange, a
16 8 facility of a national securities exchange, or a facility of a
16 9 national securities association registered under the
16 10 Securities Exchange Act of 1934 or an offer or sale, of the
16 11 underlying security in connection with the offer, sale, or
16 12 exercise of an option or other security that was exempt when
16 13 the option or other security was written or issued; or an
16 14 option or a derivative security designated by the securities
16 15 and exchange commission under section 9(b) of the Securities
16 16 Exchange Act of 1934, 15 U.S.C. } 78i(b).

16 17 7. NONPROFIT SECURITIES. A security issued by a person
16 18 organized and operated exclusively for religious, educational,

16 19 benevolent, fraternal, charitable, social, athletic, or
16 20 reformatory purposes, or as a chamber of commerce, and not for
16 21 pecuniary profit, no part of the net earnings of which inures
16 22 to the benefit of a private stockholder or other person, or a
16 23 security of a company that is excluded from the definition of
16 24 an investment company under section 3(c)(10)(B) of the
16 25 Investment Company Act of 1940, 15 U.S.C. } 80a-3(c)(10)(B);
16 26 except that with respect to the offer or sale of a note, bond,
16 27 debenture, or other evidence of indebtedness issued by such a
16 28 person, a rule may be adopted under this chapter limiting the
16 29 availability of this exemption by classifying securities,
16 30 persons, and transactions, imposing different requirements for
16 31 different classes, specifying with respect to paragraph "b"
16 32 the scope of the exemption and the grounds for denial or
16 33 suspension, and requiring an issuer to do any of the
16 34 following:

16 35 a. File a notice specifying the material terms of the
17 1 proposed offer or sale and copies of any proposed sales and
17 2 advertising literature to be used and provide that the
17 3 exemption becomes effective if the administrator does not
17 4 disallow the exemption within the period established by the
17 5 rule.

17 6 b. File a request for exemption authorization for which a
17 7 rule under this chapter may specify the scope of the
17 8 exemption, the requirement of an offering statement, the
17 9 filing of sales and advertising literature, the filing of
17 10 consent to service of process complying with section 502.611,
17 11 and grounds for denial or suspension of the exemption.

17 12 c. Register under section 502.304.

17 13 8A. COOPERATIVE ASSOCIATIONS. A stock or similar
17 14 security, including a patronage refund certificate, issued by
17 15 any of the following:

17 16 a. A cooperative housing corporation described in
17 17 paragraph 1 of subsection "b" of section 216 of the Internal
17 18 Revenue Code, if its activities are limited to the ownership,
17 19 leasing, management, or construction of residential properties
17 20 for its members, and activities incidental thereto.

17 21 b. A mutual or cooperative organization, including a
17 22 cooperative association organized in good faith under and for
17 23 any of the purposes enumerated in chapter 497, 498, 499, or
17 24 501, that deals in commodities or supplies goods or services
17 25 in transactions primarily with and for the benefit of its
17 26 members, if all of the following apply:

17 27 (1) Such stock or similar security is part of a class
17 28 issuable only to persons who deal in commodities with, or
17 29 obtain goods or services from, the issuer.

17 30 (2) Such stock or similar security is transferable only to
17 31 the issuer or a successor in interest of the transferor who
17 32 qualifies for membership in such mutual or cooperative
17 33 organization.

17 34 (3) No dividends other than patronage refunds are payable
17 35 to holders of such stock or similar security except on a
18 1 complete or partial liquidation.

18 2 8B. AGRICULTURAL COOPERATIVE ASSOCIATIONS. A security
18 3 issued by an agricultural cooperative association, provided
18 4 all of the following conditions are satisfied:

18 5 a. A commission or remuneration must not be paid or
18 6 provided either directly or indirectly for the sale, except as
18 7 permitted by the administrator by rule or by order issued upon
18 8 written application showing good cause for allowance of a
18 9 commission or other remuneration.

18 10 b. If the securities to be issued are notes or other
18 11 evidences of indebtedness and are issued after July 1, 1991,
18 12 the issuer must file with the administrator a written notice
18 13 specifying the name of the issuer, the date of the issuer's
18 14 organization, the name of a contact person, a copy of the
18 15 issuer's current audited financial statement, the types of
18 16 security or securities to be offered, and the class of persons
18 17 to whom the offer will be made in accordance with such rules
18 18 as prescribed by the administrator.

18 19 9. EQUIPMENT TRUST CERTIFICATE. An equipment trust
18 20 certificate with respect to equipment leased or conditionally
18 21 sold to a person, if any security issued by the person would
18 22 be exempt under this section or would be a federal covered
18 23 security under section 18(b)(1) of the Securities Act of 1933,
18 24 15 U.S.C. } 77r(b)(1).

18 25 9A. ECONOMIC DEVELOPMENT CORPORATIONS. Any security
18 26 issued by a corporation formed under chapter 496B.

18 27 9B. AGRICULTURAL DEVELOPMENT AUTHORITY. Any security
18 28 issued by the agricultural development authority under chapter
18 29 175.

18 30 9C. MEMBERSHIP CAMPGROUNDS. Any security representing a
18 31 membership camping contract which is registered pursuant to
18 32 section 557B.2 or exempt under section 557B.4.
18 33 9D. TIME=SHARES. Any security representing a time=share
18 34 interval as defined in section 557A.2.
18 35 9E. VIATICAL SETTLEMENT CONTRACTS. A viatical settlement
19 1 contract, or fractional or pooled interest in such contract,
19 2 provided any of the following conditions are satisfied:
19 3 a. The assignment, transfer, sale, devise, or bequest of a
19 4 death benefit of a life insurance policy or contract is made
19 5 by the viator to an insurance company as provided under Title
19 6 XIII, subtitle 1.
19 7 b. The assignment, transfer, sale, devise, or bequest of a
19 8 life insurance policy or contract, for any value less than the
19 9 expected death benefit, is made by the viator to a family
19 10 member or other person who enters into no more than one such
19 11 agreement in a calendar year.
19 12 c. A life insurance policy or contract is assigned to a
19 13 bank, savings bank, savings and loan association, credit
19 14 union, or other licensed lending institution as collateral for
19 15 a loan.
19 16 d. Accelerated benefits are exercised as provided in the
19 17 life insurance policy or contract and consistent with
19 18 applicable law.
19 19 e. The assignment, transfer, sale, devise, or bequest of
19 20 the death benefit or ownership of a life insurance policy or
19 21 contract made by the policyholder or contract owner to a
19 22 viatical settlement provider, if the viatical settlement
19 23 transaction complies with chapter 508E, including rules
19 24 adopted pursuant to that chapter.
19 25 Sec. 6. Section 502.202, Code Supplement 2003, is amended
19 26 by striking the section and inserting in lieu thereof the
19 27 following:
19 28 NEW SECTION. 502.202 EXEMPT TRANSACTIONS.
19 29 The following transactions are exempt from the requirements
19 30 of sections 502.301 through 502.306 and 502.504:
19 31 1. ISOLATED NONISSUER TRANSACTIONS. An isolated nonissuer
19 32 transaction, whether effected by or through a broker=dealer or
19 33 not.
19 34 2. NONISSUER TRANSACTIONS IN SPECIFIED OUTSTANDING
19 35 SECURITIES. A nonissuer transaction by or through a broker=
20 1 dealer registered, or exempt from registration, under this
20 2 chapter, and a resale transaction by a sponsor of a unit
20 3 investment trust registered under the Investment Company Act
20 4 of 1940, provided that for either transaction, the security is
20 5 of a class that has been outstanding in the hands of the
20 6 public for at least ninety days, if, at the date of the
20 7 transaction, all of the following apply:
20 8 a. The issuer of the security is engaged in business, the
20 9 issuer is not in the organizational stage or in bankruptcy or
20 10 receivership, and the issuer is not a blank check, blind pool,
20 11 or shell company that has no specific business plan or purpose
20 12 or has indicated that its primary business plan is to engage
20 13 in a merger or combination of the business with, or an
20 14 acquisition of, an unidentified person.
20 15 b. The security is sold at a price reasonably related to
20 16 its current market price.
20 17 c. The security does not constitute the whole or part of
20 18 an unsold allotment to, or a subscription or participation by,
20 19 the broker=dealer as an underwriter of the security or a
20 20 redistribution.
20 21 d. A nationally recognized securities manual or its
20 22 electronic equivalent designated by rule adopted or order
20 23 issued under this chapter or a record filed with the
20 24 securities and exchange commission that is publicly available
20 25 contains all of the following:
20 26 (1) A description of the business and operations of the
20 27 issuer.
20 28 (2) The names of the issuer's executive officers and the
20 29 names of the issuer's directors, if any.
20 30 (3) An audited balance sheet of the issuer as of a date
20 31 within eighteen months before the date of the transaction or,
20 32 in the case of a reorganization or merger when the parties to
20 33 the reorganization or merger each had an audited balance
20 34 sheet, and a pro forma balance sheet for the combined
20 35 organization.
21 1 (4) An audited income statement for each of the issuer's
21 2 two immediately previous fiscal years or for the period of
21 3 existence of the issuer, whichever is shorter, or, in the case
21 4 of a reorganization or merger when each party to the
21 5 reorganization or merger had audited income statements, and a

21 6 pro forma income statement.
21 7 e. Any one of the following requirements is met:
21 8 (1) The issuer of the security has a class of equity
21 9 securities listed on a national securities exchange registered
21 10 under section 6 of the Securities Exchange Act of 1934 or
21 11 designated for trading on the national association of
21 12 securities dealers automated quotation system.
21 13 (2) The issuer of the security is a unit investment trust
21 14 registered under the Investment Company Act of 1940.
21 15 (3) The issuer of the security, including its
21 16 predecessors, has been engaged in continuous business for at
21 17 least three years.
21 18 (4) The issuer of the security has total assets of at
21 19 least two million dollars based on an audited balance sheet as
21 20 of a date within eighteen months before the date of the
21 21 transaction or, in the case of a reorganization or merger when
21 22 the parties to the reorganization or merger each had such an
21 23 audited balance sheet, and a pro forma balance sheet for the
21 24 combined organization.

21 25 3. NONISSUER TRANSACTIONS IN SPECIFIED FOREIGN
21 26 TRANSACTIONS. A nonissuer transaction by or through a broker=
21 27 dealer registered or exempt from registration under this
21 28 chapter in a security of a foreign issuer that is a margin
21 29 security defined in regulations or rules adopted by the board
21 30 of governors of the United States federal reserve system.

21 31 4. NONISSUER TRANSACTIONS IN SECURITIES SUBJECT TO
21 32 SECURITIES EXCHANGE ACT REPORTING. A nonissuer transaction by
21 33 or through a broker=dealer registered or exempt from
21 34 registration under this chapter in an outstanding security if
21 35 the guarantor of the security files reports with the
22 1 securities and exchange commission under the reporting
22 2 requirements of section 13 or 15(d) of the Securities Exchange
22 3 Act of 1934, 15 U.S.C. } 78m or 78o(d).

22 4 5. NONISSUER TRANSACTIONS IN SPECIFIED FIXED INCOME
22 5 SECURITIES. A nonissuer transaction by or through a broker=
22 6 dealer registered or exempt from registration under this
22 7 chapter in a security if any of the following apply:
22 8 a. It is rated at the time of the transaction by a
22 9 nationally recognized statistical rating organization in one
22 10 of its four highest rating categories.
22 11 b. It has a fixed maturity or a fixed interest or
22 12 dividend, if all of the following apply:
22 13 (1) A default has not occurred during the current fiscal
22 14 year or within the three previous fiscal years or during the
22 15 existence of the issuer and any predecessor if less than three
22 16 fiscal years, in the payment of principal, interest, or
22 17 dividends on the security.
22 18 (2) The issuer is engaged in business, is not in the
22 19 organizational stage or in bankruptcy or receivership, and is
22 20 not and has not been within the previous twelve months a blank
22 21 check, blind pool, or shell company that has no specific
22 22 business plan or purpose or has indicated that its primary
22 23 business plan is to engage in a merger or combination of the
22 24 business with, or an acquisition of, an unidentified person.

22 25 6. UNSOLICITED BROKERAGE TRANSACTIONS. A nonissuer
22 26 transaction by or through a broker=dealer registered or exempt
22 27 from registration under this chapter effecting an unsolicited
22 28 order or offer to purchase.

22 29 7. NONISSUER TRANSACTION BY PLEDGEEES. A nonissuer
22 30 transaction executed by a bona fide pledgee without the
22 31 purpose of evading this chapter.

22 32 8. NONISSUER TRANSACTIONS WITH FEDERAL COVERED INVESTMENT
22 33 ADVISERS. A nonissuer transaction by a federal covered
22 34 investment adviser with investments under management in excess
22 35 of one hundred million dollars acting in the exercise of
23 1 discretionary authority in a signed record for the account of
23 2 others.

23 3 9. SPECIFIED EXCHANGE TRANSACTIONS. A transaction in a
23 4 security, whether or not the security or transaction is
23 5 otherwise exempt, in exchange for one or more bona fide
23 6 outstanding securities, claims, or property interests, or
23 7 partly in such exchange and partly for cash, if the terms and
23 8 conditions of the issuance and exchange or the delivery and
23 9 exchange and the fairness of the terms and conditions have
23 10 been approved by the administrator after a hearing.

23 11 10. UNDERWRITER TRANSACTIONS. A transaction between the
23 12 issuer or other person on whose behalf the offering is made
23 13 and an underwriter, or among underwriters.

23 14 11. UNIT SECURED TRANSACTIONS. A transaction in a note,
23 15 bond, debenture, or other evidence of indebtedness secured by
23 16 a mortgage or other security agreement if all of the following

23 17 apply:
23 18 a. The note, bond, debenture, or other evidence of
23 19 indebtedness is offered and sold with the mortgage or other
23 20 security agreement as a unit.
23 21 b. A general solicitation or general advertisement of the
23 22 transaction is not made.
23 23 c. A commission or other remuneration is not paid or
23 24 given, directly or indirectly, to a person not registered
23 25 under this chapter as a broker-dealer or as an agent.
23 26 12. BANKRUPTCY, GUARDIAN, OR CONSERVATOR TRANSACTIONS. A
23 27 transaction by an executor, administrator of an estate,
23 28 sheriff, marshal, receiver, trustee in bankruptcy, guardian,
23 29 or conservator.
23 30 13. TRANSACTIONS WITH SPECIFIED INVESTORS. A sale or
23 31 offer to sell to any of the following:
23 32 a. An institutional investor.
23 33 b. A federal covered investment adviser.
23 34 c. Any other person exempted by rule adopted or order
23 35 issued under this chapter.
24 1 d. A person or class of persons who are granted this
24 2 exemption by the administrator. The administrator, by rule or
24 3 order, may grant this exemption to a person or class of
24 4 persons based upon the factors of financial sophistication,
24 5 net worth, and the amount of assets under investment.
24 6 14. LIMITED OFFERING TRANSACTIONS. A sale or an offer to
24 7 sell securities by or on behalf of an issuer, if the
24 8 transaction is part of a single issue in which all of the
24 9 following apply:
24 10 a. Not more than thirty-five purchasers are present in
24 11 this state during any twelve consecutive months, other than
24 12 those designated in subsection 13.
24 13 b. A general solicitation or general advertising is not
24 14 made in connection with the offer to sell or sale of the
24 15 securities.
24 16 c. A commission or other remuneration is not paid or
24 17 given, directly or indirectly, to a person other than a
24 18 broker-dealer registered under this chapter or an agent
24 19 registered under this chapter for soliciting a prospective
24 20 purchaser in this state.
24 21 d. The issuer reasonably believes that all the purchasers
24 22 in this state, other than those designated in subsection 13,
24 23 are purchasing for investment.
24 24 15. TRANSACTIONS WITH EXISTING SECURITY HOLDERS. A
24 25 transaction under an offer to existing security holders of the
24 26 issuer, including persons that at the date of the transaction
24 27 are holders of convertible securities, options, or warrants,
24 28 if a commission or other remuneration, other than a standby
24 29 commission, is not paid or given, directly or indirectly, for
24 30 soliciting a security holder in this state.
24 31 16. OFFERINGS REGISTERED UNDER THE CHAPTER AND THE
24 32 SECURITIES ACT OF 1933. An offer to sell, but not a sale, of
24 33 a security not exempt from registration under the Securities
24 34 Act of 1933 if all of the following apply:
24 35 a. A registration or offering statement or similar record
25 1 as required under the Securities Act of 1933 has been filed,
25 2 but is not effective, or the offer is made in compliance with
25 3 rule 165 adopted under the Securities Act of 1933, 17 C.F.R.
25 4 } 230.165.
25 5 b. A stop order of which the offeror is aware has not been
25 6 issued against the offeror by the administrator or the
25 7 securities and exchange commission, and an audit, inspection,
25 8 or proceeding that is public and that may culminate in a stop
25 9 order is not known by the offeror to be pending.
25 10 17. OFFERINGS WHEN REGISTRATION HAS BEEN FILED, BUT IS NOT
25 11 EFFECTIVE UNDER THIS CHAPTER AND EXEMPT FROM THE SECURITIES
25 12 ACT OF 1933. An offer to sell, but not a sale, of a security
25 13 exempt from registration under the Securities Act of 1933 if
25 14 all of the following apply:
25 15 a. A registration statement has been filed under this
25 16 chapter, but is not effective.
25 17 b. A solicitation of interest is provided in a record to
25 18 offerees in compliance with a rule adopted by the
25 19 administrator under this chapter.
25 20 c. A stop order of which the offeror is aware has not been
25 21 issued by the administrator under this chapter and an audit,
25 22 inspection, or proceeding that may culminate in a stop order
25 23 is not known by the offeror to be pending.
25 24 18. CONTROL TRANSACTIONS. A transaction involving the
25 25 distribution of the securities of an issuer to the security
25 26 holders of another person in connection with a merger,
25 27 consolidation, exchange of securities, sale of assets, or

25 28 other reorganization to which the issuer, or its parent or
25 29 subsidiary and the other person, or its parent or subsidiary,
25 30 are parties.

25 31 19. RECISION OFFERS. A recision offer, sale, or purchase
25 32 under section 502.510.

25 33 20. OUT-OF-STATE OFFERS OR SALES. An offer or sale of a
25 34 security to a person not a resident of this state and not
25 35 present in this state if the offer or sale does not constitute
26 1 a violation of the laws of the state or foreign jurisdiction
26 2 in which the offeree or purchaser is present and is not part
26 3 of an unlawful plan or scheme to evade this chapter.

26 4 21. EMPLOYEE BENEFIT PLANS. Employees' stock purchase,
26 5 savings, option, profit-sharing, pension, or similar
26 6 employees' benefit plan, including any securities, plan
26 7 interests, and guarantees issued under a compensatory benefit
26 8 plan or compensation contract, contained in a record,
26 9 established by the issuer, its parents, its majority-owned
26 10 subsidiaries, or the majority-owned subsidiaries of the
26 11 issuer's parent for the participation of their employees
26 12 including offers or sales of such securities to any of the
26 13 following:

26 14 a. Directors; general partners; trustees, if the issuer is
26 15 a business trust; officers; consultants; and advisers.

26 16 b. Family members who acquire such securities from those
26 17 persons through gifts or domestic relations orders.

26 18 c. Former employees, directors, general partners,
26 19 trustees, officers, consultants, and advisers if those
26 20 individuals were employed by or providing services to the
26 21 issuer when the securities were offered.

26 22 d. Insurance agents who are exclusive insurance agents of
26 23 the issuer, or the issuer's subsidiaries or parents, or who
26 24 derive more than fifty percent of their annual income from
26 25 those organizations.

26 26 22. SPECIFIED DIVIDENDS AND TENDER OFFERS AND JUDICIALLY
26 27 RECOGNIZED REORGANIZATIONS. A transaction involving any of
26 28 the following:

26 29 a. A stock dividend or equivalent equity distribution,
26 30 whether the corporation or other business organization
26 31 distributing the dividend or equivalent equity distribution is
26 32 the issuer or not, if nothing of value is given by
26 33 stockholders or other equity holders for the dividend or
26 34 equivalent equity distribution other than the surrender of a
26 35 right to a cash or property dividend if each stockholder or
27 1 other equity holder may elect to take the dividend or
27 2 equivalent equity distribution in cash, property, or stock.

27 3 b. An act incident to a judicially approved reorganization
27 4 in which a security is issued in exchange for one or more
27 5 outstanding securities, claims, or property interests, or
27 6 partly in such exchange and partly for cash.

27 7 c. The solicitation of tenders of securities by an offeror
27 8 in a tender offer in compliance with rule 162 adopted under
27 9 the Securities Act of 1933, 17 C.F.R. } 230.162.

27 10 23. NONISSUER TRANSACTIONS INVOLVING SPECIFIED FOREIGN
27 11 ISSUER SECURITIES TRADED ON DESIGNATED SECURITY EXCHANGES. A
27 12 nonissuer transaction in an outstanding security by or through
27 13 a broker-dealer registered or exempt from registration under
27 14 this chapter, if the issuer is a reporting issuer in a foreign
27 15 jurisdiction designated by this subsection or by rule adopted
27 16 or order issued under this chapter; has been subject to
27 17 continuous reporting requirements in the foreign jurisdiction
27 18 for not less than one hundred eighty days before the
27 19 transaction; and the security is listed on the foreign
27 20 jurisdiction's securities exchange that has been designated by
27 21 this subsection or by rule adopted or order issued under this
27 22 chapter, or is a security of the same issuer that is of senior
27 23 or substantially equal rank to the listed security or is a
27 24 warrant or right to purchase or subscribe to any of the
27 25 foregoing. For purposes of this subsection, Canada, together
27 26 with its provinces and territories, is a designated foreign
27 27 jurisdiction and the Toronto stock exchange, inc., is a
27 28 designated securities exchange. After an administrative
27 29 hearing in compliance with chapter 17A, the administrator, by
27 30 rule adopted or order issued under this chapter, may revoke
27 31 the designation of a securities exchange under this
27 32 subsection, if the administrator finds that revocation is
27 33 necessary or appropriate in the public interest and for the
27 34 protection of investors.

27 35 Sec. 7. Section 502.203, Code 2003, is amended by striking
28 1 the section and inserting in lieu thereof the following:

28 2 502.203 ADDITIONAL EXEMPTIONS AND WAIVERS.

28 3 A rule adopted or order issued under this chapter may

28 4 exempt a security, transaction, or offer; a rule under this
28 5 chapter may exempt a class of securities, transactions, or
28 6 offers from any or all of the requirements of sections 502.301
28 7 through 502.306 and 502.504; and an order under this chapter
28 8 may waive, in whole or in part, any or all of the conditions
28 9 for an exemption or offer under sections 502.201 and 502.202.

28 10 Sec. 8. Section 502.204, Code 2003, is amended by striking
28 11 the section and inserting in lieu thereof the following:

28 12 502.204 DENIAL, SUSPENSION, REVOCATION, CONDITION, OR
28 13 LIMITATION OF EXEMPTIONS.

28 14 1. ENFORCEMENT-RELATED POWERS. Except with respect to a
28 15 federal covered security or a transaction involving a federal
28 16 covered security, an order under this chapter may deny,
28 17 suspend application of, condition, limit, or revoke an
28 18 exemption created under section 502.201, subsection 3,
28 19 paragraph "c", or subsection 7 or 8, or section 502.202, or an
28 20 exemption or waiver created under section 502.203 with respect
28 21 to a specific security, transaction, or offer. An order under
28 22 this section may be issued only pursuant to the procedures in
28 23 section 502.306, subsection 4, or section 502.604, and only
28 24 prospectively.

28 25 2. KNOWLEDGE OF ORDER REQUIRED. A person does not violate
28 26 section 502.301, 502.303 through 502.306, 502.504, or 502.510
28 27 by an offer to sell, offer to purchase, sale, or purchase
28 28 effected after the entry of an order issued under this section
28 29 if the person did not know, and in the exercise of reasonable
28 30 care could not have known, of the order.

28 31 ARTICLE 3

28 32 REGISTRATION OF SECURITIES AND NOTICE FILING OF
28 33 FEDERAL COVERED SECURITIES

28 34 Sec. 9. Section 502.301, Code 2003, is amended by striking
28 35 the section and inserting in lieu thereof the following:

29 1 502.301 SECURITIES REGISTRATION REQUIREMENT.

29 2 It is unlawful for a person to offer or sell a security in
29 3 this state unless one of the following applies:

29 4 1. The security is a federal covered security.

29 5 2. The security, transaction, or offer is exempted from
29 6 registration under sections 502.201 through 502.203.

29 7 3. The security is registered under this chapter.

29 8 Sec. 10. Section 502.302, Code 2003, is amended by
29 9 striking the section and inserting in lieu thereof the
29 10 following:

29 11 502.302 NOTICE FILING.

29 12 1. REQUIRED FILING OF RECORDS. With respect to a federal
29 13 covered security, as defined in section 18(b)(2) of the
29 14 Securities Act of 1933, 15 U.S.C. } 77r(b)(2), that is not
29 15 otherwise exempt under sections 502.201 through 502.203, a
29 16 rule adopted or order issued under this chapter may require
29 17 the filing of any or all of the following records:

29 18 a. Before the initial offer of a federal covered security
29 19 in this state, all records that are part of a federal
29 20 registration statement filed with the securities and exchange
29 21 commission under the Securities Act of 1933 and a consent to
29 22 service of process complying with section 502.611 signed by
29 23 the issuer.

29 24 A person who is the issuer of a federal covered security
29 25 under section 18(b)(2) of the Securities Act of 1933 shall
29 26 initially make a notice filing and annually renew a notice
29 27 filing in this state for an indefinite amount or a fixed
29 28 amount. The fixed amount must be for two hundred fifty
29 29 thousand dollars. A notice filer shall pay a filing fee when
29 30 the notice is filed. If the amount covered by the notice is
29 31 indefinite, the notice filer shall pay a filing fee of one
29 32 thousand dollars. If the amount covered by the notice is
29 33 fixed, the notice filer shall pay a filing fee of two hundred
29 34 fifty dollars, and all of the following shall apply:

29 35 (1) The notice filer shall file a sales report with the
30 1 administrator or pay an additional filing fee of one thousand
30 2 two hundred fifty dollars within ninety days after the notice
30 3 filing's annual renewal date. If the notice filer files a
30 4 sales report with the administrator, the notice filer shall
30 5 pay an additional filing fee of one-tenth of one percent of
30 6 the amount of securities sold in excess of two hundred fifty
30 7 thousand dollars. The additional filing fee must be paid
30 8 within ninety days after the notice filing's annual renewal
30 9 date.

30 10 (2) The notice filing covering the additional securities
30 11 shall be effective retroactively as of the effective date of
30 12 the notice filing that is being amended.

30 13 b. After the initial offer of the federal covered security
30 14 in this state, all records that are part of an amendment to a

30 15 federal registration statement filed with the securities and
30 16 exchange commission under the Securities Act of 1933.

30 17 2. NOTICE FILING EFFECTIVENESS AND RENEWAL. A notice
30 18 filing under subsection 1 is effective for one year commencing
30 19 on the later of the notice filing or the effectiveness of the
30 20 offering filed with the securities and exchange commission.
30 21 On or before expiration, the issuer may renew a notice filing
30 22 by filing a copy of those records filed by the issuer with the
30 23 securities and exchange commission that are required by rule
30 24 or order under this chapter to be filed and by paying the
30 25 renewal fee required by subsection 1, paragraph "a". A
30 26 previously filed consent to service of process complying with
30 27 section 502.611 may be incorporated by reference in a renewal.
30 28 A renewed notice filing becomes effective upon the expiration
30 29 of the filing being renewed.

30 30 3. NOTICE FILINGS FOR FEDERAL COVERED SECURITIES UNDER
30 31 SECTION 18(b)(4)(D). With respect to a security that is a
30 32 federal covered security under section 18(b)(4)(D) of the
30 33 Securities Act of 1933, 15 U.S.C. } 77r(b)(4)(D), a rule under
30 34 this chapter may require a notice filing by or on behalf of an
30 35 issuer to include a copy of form D, including the appendix, as
31 1 promulgated by the securities and exchange commission, and a
31 2 consent to service of process complying with section 502.611
31 3 signed by the issuer not later than fifteen days after the
31 4 first sale of the federal covered security in this state and
31 5 the payment of a fee of one hundred dollars; and the payment
31 6 of a fee of two hundred fifty dollars for any late filing.

31 7 4. STOP ORDERS. Except with respect to a federal security
31 8 under section 18(b)(1) of the Securities Act of 1933, 15
31 9 U.S.C. } 77r(b)(1), if the administrator finds that there is a
31 10 failure to comply with a notice or fee requirement of this
31 11 section, the administrator may issue a stop order suspending
31 12 the offer and sale of a federal covered security in this
31 13 state. If the deficiency is corrected, the stop order is void
31 14 as of the time of its issuance and no penalty may be imposed
31 15 by the administrator.

31 16 Sec. 11. Section 502.303, Code 2003, is amended by
31 17 striking the section and inserting in lieu thereof the
31 18 following:

31 19 502.303 SECURITIES REGISTRATION BY COORDINATION.

31 20 1. REGISTRATION PERMITTED.

31 21 a. A security for which a registration statement has been
31 22 filed under the Securities Act of 1933 in connection with the
31 23 same offering may be registered by coordination under this
31 24 section.

31 25 b. A proposed sale pursuant to the exemption contained in
31 26 "Regulation A" as adopted under section 3(b) of the Securities
31 27 Act of 1933 where such registration statement has not become
31 28 effective or notification of proposed sale has not been
31 29 qualified may be registered by coordination under this
31 30 section.

31 31 2. REQUIRED RECORDS. A registration statement and
31 32 accompanying records under this section must contain or be
31 33 accompanied by all of the following records in addition to the
31 34 information specified in section 502.305 and a consent to
31 35 service of process complying with section 502.611:

32 1 a. A copy of the latest form of prospectus filed under the
32 2 Securities Act of 1933.

32 3 b. A copy of the articles of incorporation and bylaws or
32 4 their substantial equivalents currently in effect; a copy of
32 5 any agreement with or among underwriters; a copy of any
32 6 indenture or other instrument governing the issuance of the
32 7 security to be registered; and a specimen, copy, or
32 8 description of the security that is required by rule adopted
32 9 or order issued under this chapter.

32 10 c. Copies of any other information or any other records
32 11 filed by the issuer under the Securities Act of 1933 requested
32 12 by the administrator.

32 13 d. An undertaking to forward each amendment to the federal
32 14 prospectus, other than an amendment that delays the effective
32 15 date of the registration statement, promptly after it is filed
32 16 with the securities and exchange commission.

32 17 3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION STATEMENT.

32 18 A registration statement under this section becomes effective
32 19 simultaneously with or subsequent to the federal registration
32 20 statement when all the following conditions are satisfied:

32 21 a. A stop order under subsection 4 or section 502.306 or
32 22 issued by the securities and exchange commission is not in
32 23 effect and a proceeding is not pending against the issuer
32 24 under section 502.306.

32 25 b. The registration statement has been on file for at

32 26 least twenty days or a shorter period provided by rule adopted
32 27 or order issued under this chapter.

32 28 4. NOTICE OF FEDERAL REGISTRATION STATEMENT EFFECTIVENESS.
32 29 The registrant shall promptly notify the administrator in a
32 30 record of the date when the federal registration statement
32 31 becomes effective and the content of any price amendment and
32 32 shall promptly file a record containing the price amendment.
32 33 If the notice is not timely received, the administrator may
32 34 issue a stop order, without prior notice or hearing,
32 35 retroactively denying effectiveness to the registration
33 1 statement or suspending its effectiveness until in compliance
33 2 with this section. The administrator shall promptly notify
33 3 the registrant of an order by telegram, telephone, or
33 4 electronic means and promptly confirm this notice by a record.
33 5 If the registrant subsequently complies with the notice
33 6 requirements of this section, the stop order is void as of the
33 7 date of its issuance.

33 8 5. EFFECTIVENESS OF REGISTRATION STATEMENT. If the
33 9 federal registration statement becomes effective before each
33 10 of the conditions in this section is satisfied or is waived by
33 11 the administrator, the registration statement is automatically
33 12 effective under this chapter when all the conditions are
33 13 satisfied or waived. If the registrant notifies the
33 14 administrator of the date when the federal registration
33 15 statement is expected to become effective, the administrator
33 16 shall promptly notify the registrant by telegram, telephone,
33 17 or electronic means and promptly confirm this notice by a
33 18 record, indicating whether all the conditions are satisfied or
33 19 waived and whether the administrator intends the institution
33 20 of a proceeding under section 502.306. The notice by the
33 21 administrator does not preclude the institution of such a
33 22 proceeding.

33 23 Sec. 12. Section 502.304, Code 2003, is amended by
33 24 striking the section and inserting in lieu thereof the
33 25 following:

33 26 502.304 SECURITIES REGISTRATION BY QUALIFICATION.

33 27 1. REGISTRATION PERMITTED. A security may be registered
33 28 by qualification under this section.

33 29 2. REQUIRED RECORDS. A registration statement under this
33 30 section must contain the information or records specified in
33 31 section 502.305, a consent to service of process complying
33 32 with section 502.611, and, if required by rule adopted under
33 33 this chapter, all of the following information or records:

33 34 a. With respect to the issuer and any significant
33 35 subsidiary, its name, address, and form of organization; the
34 1 state or foreign jurisdiction and date of its organization;
34 2 the general character and location of its business; a
34 3 description of its physical properties and equipment; and a
34 4 statement of the general competitive conditions in the
34 5 industry or business in which it is or will be engaged.

34 6 b. With respect to each director and officer of the
34 7 issuer, and other person having a similar status or performing
34 8 similar functions, the person's name, address, and principal
34 9 occupation for the previous five years; the amount of
34 10 securities of the issuer held by the person as of the
34 11 thirtieth day before the filing of the registration statement;
34 12 the amount of the securities covered by the registration
34 13 statement to which the person has indicated an intention to
34 14 subscribe; and a description of any material interest of the
34 15 person in any material transaction with the issuer or a
34 16 significant subsidiary effected within the previous three
34 17 years or proposed to be effected.

34 18 c. With respect to persons covered by paragraph "b", the
34 19 aggregate sum of the remuneration paid to those persons during
34 20 the previous twelve months and estimated to be paid during the
34 21 next twelve months, directly or indirectly, by the issuer, and
34 22 all predecessors, parents, subsidiaries, and affiliates of the
34 23 issuer.

34 24 d. With respect to a person owning of record or owning
34 25 beneficially, if known, ten percent or more of the outstanding
34 26 shares of any class of equity security of the issuer, the
34 27 information specified in paragraph "b" other than the person's
34 28 occupation.

34 29 e. With respect to a promoter, if the issuer was organized
34 30 within the previous three years, the information or records
34 31 specified in paragraph "b", any amount paid to the promoter
34 32 within that period or intended to be paid to the promoter, and
34 33 the consideration for the payment.

34 34 f. With respect to a person on whose behalf any part of
34 35 the offering is to be made in a nonissuer distribution, the
35 1 person's name and address; the amount of securities of the

35 2 issuer held by the person as of the date of the filing of the
35 3 registration statement; a description of any material interest
35 4 of the person in any material transaction with the issuer or
35 5 any significant subsidiary effected within the previous three
35 6 years or proposed to be effected; and a statement of the
35 7 reasons for making the offering.

35 8 g. The capitalization and long-term debt, on both a
35 9 current and pro forma basis, of the issuer and any significant
35 10 subsidiary, including a description of each security
35 11 outstanding or being registered or otherwise offered, and a
35 12 statement of the amount and kind of consideration, whether in
35 13 the form of cash, physical assets, services, patents,
35 14 goodwill, or anything else of value, for which the issuer or
35 15 any subsidiary has issued its securities within the previous
35 16 two years or is obligated to issue its securities.

35 17 h. The kind and amount of securities to be offered; the
35 18 proposed offering price or the method by which it is to be
35 19 computed; any variation at which a proportion of the offering
35 20 is to be made to a person or class of persons other than the
35 21 underwriters, with a specification of the person or class; the
35 22 basis on which the offering is to be made if otherwise than
35 23 for cash; the estimated aggregate underwriting and selling
35 24 discounts or commissions and finders' fees, including
35 25 separately cash, securities, contracts, or anything else of
35 26 value to accrue to the underwriters or finders in connection
35 27 with the offering or, if the selling discounts or commissions
35 28 are variable, the basis of determining them and their maximum
35 29 and minimum amounts; the estimated amounts of other selling
35 30 expenses, including legal, engineering, and accounting
35 31 charges; the name and address of each underwriter and each
35 32 recipient of a finder's fee; a copy of any underwriting or
35 33 selling group agreement under which the distribution is to be
35 34 made or the proposed form of any such agreement whose terms
35 35 have not yet been determined; and a description of the plan of
36 1 distribution of any securities that are to be offered
36 2 otherwise than through an underwriter.

36 3 i. The estimated monetary proceeds to be received by the
36 4 issuer from the offering; the purposes for which the proceeds
36 5 are to be used by the issuer; the estimated amount to be used
36 6 for each purpose; the order or priority in which the proceeds
36 7 will be used for the purposes stated; the amounts of any funds
36 8 to be raised from other sources to achieve the purposes
36 9 stated; the sources of the funds; and, if a part of the
36 10 proceeds is to be used to acquire property, including
36 11 goodwill, otherwise than in the ordinary course of business,
36 12 the names and addresses of the vendors, the purchase price,
36 13 the names of any persons that have received commissions in
36 14 connection with the acquisition, and the amounts of the
36 15 commissions and other expenses in connection with the
36 16 acquisition, including the cost of borrowing money to finance
36 17 the acquisition.

36 18 j. A description of any stock options or other security
36 19 options outstanding, or to be created in connection with the
36 20 offering, and the amount of those options held or to be held
36 21 by each person required to be named in paragraph "b", "d",
36 22 "e", "f", or "h" and by any person that holds or will hold ten
36 23 percent or more in the aggregate of those options.

36 24 k. The dates of, parties to, and general effect concisely
36 25 stated of each managerial or other material contract made or
36 26 to be made otherwise than in the ordinary course of business
36 27 to be performed in whole or in part at or after the filing of
36 28 the registration statement or that was made within the
36 29 previous two years, and a copy of the contract.

36 30 l. A description of any pending litigation, action, or
36 31 proceeding to which the issuer is a party and that materially
36 32 affects its business or assets, and any litigation, action, or
36 33 proceeding known to be contemplated by governmental
36 34 authorities.

36 35 m. A copy of any prospectus, pamphlet, circular, form
37 1 letter, advertisement, or other sales literature intended as
37 2 of the effective date to be used in connection with the
37 3 offering and any solicitation of interest used in compliance
37 4 with section 502.202, subsection 17, paragraph "b".

37 5 n. A specimen or copy of the security being registered,
37 6 unless the security is uncertificated; a copy of the issuer's
37 7 articles of incorporation and bylaws or their substantial
37 8 equivalents, in effect; and a copy of any indenture or other
37 9 instrument covering the security to be registered.

37 10 o. A signed or conformed copy of an opinion of counsel
37 11 concerning the legality of the security being registered, with
37 12 an English translation if it is in a language other than

37 13 English, which states whether the security when sold will be
37 14 validly issued, fully paid, and nonassessable and, if a debt
37 15 security, a binding obligation of the issuer.

37 16 p. A signed or conformed copy of a consent of any
37 17 accountant, engineer, appraiser, or other person whose
37 18 profession gives authority for a statement made by the person,
37 19 if the person is named as having prepared or certified a
37 20 report or valuation, other than an official record, that is
37 21 public, which is used in connection with the registration
37 22 statement.

37 23 q. A balance sheet of the issuer as of a date within four
37 24 months before the filing of the registration statement; a
37 25 statement of income and a statement of cash flows for each of
37 26 the three fiscal years preceding the date of the balance sheet
37 27 and for any period between the close of the immediately
37 28 previous fiscal year and the date of the balance sheet, or for
37 29 the period of the issuer's and any predecessor's existence if
37 30 less than three years; and, if any part of the proceeds of the
37 31 offering is to be applied to the purchase of a business, the
37 32 financial statements that would be required if that business
37 33 were the registrant.

37 34 r. Any additional information or records required by rule
37 35 adopted or order issued under this chapter.

38 1 2A. REPORTS AND EXAMINATIONS. The administrator may by
38 2 rule or order require as a condition of registration by
38 3 qualification, and at the expense of the applicant or
38 4 registrant, that a report by an accountant, engineer,
38 5 appraiser, or other professional person be filed. The
38 6 administrator may also designate one or more employees of the
38 7 securities bureau to make an examination of the business and
38 8 records of an issuer of securities for which a registration
38 9 statement has been filed by qualification, at the expense of
38 10 the applicant or registrant.

38 11 3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION STATEMENT.
38 12 A registration statement under this section becomes effective
38 13 thirty days, or any shorter period provided by rule adopted or
38 14 order issued under this chapter, after the date the
38 15 registration statement or the last amendment other than a
38 16 price amendment is filed, if any of the following applies:

38 17 a. A stop order is not in effect and a proceeding is not
38 18 pending under section 502.306.

38 19 b. The administrator has not issued an order under section
38 20 502.306 delaying effectiveness.

38 21 c. The applicant or registrant has not requested that
38 22 effectiveness be delayed.

38 23 4. DELAY OF EFFECTIVENESS OF REGISTRATION STATEMENT. The
38 24 administrator may delay effectiveness once for not more than
38 25 ninety days if the administrator determines the registration
38 26 statement is not complete in all material respects and
38 27 promptly notifies the applicant or registrant of that
38 28 determination. The administrator may also delay effectiveness
38 29 for a further period of not more than thirty days if the
38 30 administrator determines that the delay is necessary or
38 31 appropriate.

38 32 5. PROSPECTUS DISTRIBUTION MAY BE REQUIRED. A rule
38 33 adopted or order issued under this chapter may require as a
38 34 condition of registration under this section that a prospectus
38 35 containing a specified part of the information or record
39 1 specified in subsection 2 be sent or given to each person to
39 2 whom an offer is made, before or concurrently, with the
39 3 earliest of any of the following:

39 4 a. The first offer made in a record to the person
39 5 otherwise than by means of a public advertisement, by or for
39 6 the account of the issuer or another person on whose behalf
39 7 the offering is being made or by an underwriter or broker=
39 8 dealer that is offering part of an unsold allotment or
39 9 subscription taken by the person as a participant in the
39 10 distribution.

39 11 b. The confirmation of a sale made by or for the account
39 12 of the person.

39 13 c. Payment pursuant to such a sale.

39 14 d. Delivery of the security pursuant to such a sale.

39 15 Sec. 13. NEW SECTION. 502.304A EXPEDITED REGISTRATION BY
39 16 FILING FOR SMALL ISSUERS.

39 17 1. REGISTRATION PERMITTED. A security meeting the
39 18 conditions set forth in this section may be registered by
39 19 filing as provided in this section.

39 20 2. CONDITIONS OF THE ISSUER. In order to register under
39 21 this section, the issuer must meet all of the following
39 22 conditions:

39 23 a. The issuer must be a corporation, limited liability

39 24 company, or partnership organized under the laws of one of the
39 25 states or possessions of the United States which engages in or
39 26 proposes to engage in a business other than petroleum
39 27 exploration or production mining or other extractive
39 28 industries.

39 29 b. The securities must be offered and sold only on behalf
39 30 of the issuer, and must not be used by any selling security
39 31 holder to register securities for resale.

39 32 3. CONDITIONS FOR EFFECTIVENESS OF REGISTRATION ==
39 33 REQUIRED RECORDS AND FEE. In order to register under this
39 34 section, all of the following conditions must be satisfied:

39 35 a. The offering price for common stock, the exercise price
40 1 if the securities are options, warrants, or rights for common
40 2 stock, or the conversion price if the securities are
40 3 convertible into common stock must be equal to or greater than
40 4 one dollar per share. The issuer must not split its common
40 5 stock, or declare a stock dividend, for two years after
40 6 effectiveness of the registration, except that in connection
40 7 with a subsequent registered public offering, the issuer may
40 8 upon application and consent of the administrator take such
40 9 action.

40 10 b. A commission, fee, or other remuneration shall not be
40 11 paid or given, directly or indirectly, for the sale of the
40 12 securities, except for a payment to a broker=dealer or agent
40 13 registered under this chapter, or except for a payment as
40 14 permitted by the administrator by rule or by order issued upon
40 15 written application showing good cause for allowance of a
40 16 commission, fee, or other remuneration.

40 17 c. The issuer or a broker=dealer offering or selling the
40 18 securities is not or would not be disqualified under rule 505,
40 19 17 C.F.R. } 230.505(2)(iii), adopted under the Securities Act
40 20 of 1933.

40 21 d. The aggregate offering price of the offering of
40 22 securities by the issuer within or outside this state must not
40 23 exceed one million dollars, less the aggregate offering price
40 24 for all securities sold within twelve months before the start
40 25 of, and during the offering of, the securities under rule 504,
40 26 17 C.F.R. } 230.504, in reliance on any exemption under
40 27 section 3(b) of the Securities Act of 1933 or in violation of
40 28 section 5(a) of that Act; provided, that if rule 504, 17
40 29 C.F.R. } 230.504, adopted under the Securities Act of 1933, is
40 30 amended, that the administrator may by rule increase the limit
40 31 under this paragraph to conform to amendments to federal law,
40 32 including but not limited to modification in the amount of the
40 33 aggregate offering price.

40 34 e. An offering document meeting the disclosure
40 35 requirements of rule 502(b)(2), 17 C.F.R. } 230.502(b)(2),
41 1 adopted under the Securities Act of 1933, must be delivered to
41 2 each purchaser in the state prior to the sale of the
41 3 securities, unless the administrator by rule or order provides
41 4 for disclosure different from that rule.

41 5 f. The issuer must file with the administrator an
41 6 application for registration and the offering document to be
41 7 used in connection with the offer and sale of securities.

41 8 g. The issuer must pay to the administrator a fee of one
41 9 hundred dollars and is not required to pay the filing fee set
41 10 forth in section 502.305, subsection 2.

41 11 4. EFFECTIVENESS OF REGISTRATION. Unless the
41 12 administrator issues a stop order denying the effectiveness of
41 13 the registration, as provided in section 502.306, the
41 14 registration becomes effective on the fifth business day after
41 15 the registration has been filed with the administrator, or
41 16 earlier if the administrator permits a shorter time period
41 17 between registration and effectiveness.

41 18 5. AGENT REGISTRATION. In connection with an offering
41 19 registered under this section, a person may be registered as
41 20 an agent of the issuer under section 502.402 by the filing of
41 21 an application by the issuer with the administrator for the
41 22 registration of the person as an agent of the issuer and the
41 23 paying of a fee of ten dollars. Notwithstanding any other
41 24 provision of this chapter, the registration of the agent shall
41 25 be effective until withdrawn by the issuer or until the
41 26 securities registered pursuant to the registration statement
41 27 have all been sold, whichever occurs first. The registration
41 28 of an agent shall become effective when ordered by the
41 29 administrator or on the fifth business day after the agent's
41 30 application has been filed with the administrator, whichever
41 31 occurs first, and the administrator shall not impose further
41 32 conditions upon the registration of the agent. However, the
41 33 administrator may deny, revoke, suspend, or withdraw the
41 34 registration of the agent at any time as provided in section

41 35 502.412. An agent registered solely pursuant to this section
42 1 is entitled to sell only securities registered under this
42 2 section.

42 3 6. INAPPLICABLE ISSUERS. This section is not applicable
42 4 to any of the following issuers:

42 5 a. An investment company, including a mutual fund.

42 6 b. An issuer subject to the reporting requirements of
42 7 section 13 or 15(d) of the Securities Exchange Act of 1934.

42 8 c. A direct participation program, unless otherwise
42 9 permitted by the administrator by rule or order for good
42 10 cause.

42 11 d. A blind pool or other offering for which the specific
42 12 business or properties cannot now be described, unless the
42 13 administrator determines that the blind pool is a community
42 14 development, seed, or venture capital fund for which the
42 15 administrator permits a waiver.

42 16 7. LIMITS ON STOP ORDERS. Notwithstanding any other
42 17 provision of this chapter, the administrator shall not deny
42 18 effectiveness to or suspend or revoke the effectiveness of a
42 19 registration under this section on the basis of section
42 20 502.306, subsection 1, paragraph "h".

42 21 Sec. 14. Section 502.305, Code 2003, is amended by
42 22 striking the section and inserting in lieu thereof the
42 23 following:

42 24 502.305 SECURITIES REGISTRATION FILINGS.

42 25 1. WHO MAY FILE. A registration statement may be filed by
42 26 the issuer, a person on whose behalf the offering is to be
42 27 made, or a broker-dealer registered under this chapter.

42 28 2. FILING. Except as provided in subsection 10 and
42 29 section 502.304A, subsection 3, paragraph "g", a person who
42 30 files a registration statement or a notice filing shall pay a
42 31 filing fee of one-tenth of one percent of the proposed
42 32 aggregate sales price of the securities to be offered to
42 33 persons in this state pursuant to the registration statement
42 34 or notice filing. However, except as provided in subsection
42 35 10, section 502.302, subsection 1, paragraph "a", and section
43 1 502.304A, subsection 3, paragraph "g", the annual filing fee
43 2 shall not be less than fifty dollars or more than one thousand
43 3 dollars. The administrator shall retain the filing fee even
43 4 if the notice filing is withdrawn or the registration is
43 5 withdrawn, denied, suspended, revoked, or abandoned.

43 6 3. STATUS OF OFFERING. A registration statement filed
43 7 under section 502.303 or 502.304 must specify all of the
43 8 following:

43 9 a. The amount of securities to be offered in this state.

43 10 b. The states in which a registration statement or similar
43 11 record in connection with the offering has been or is to be
43 12 filed.

43 13 c. Any adverse order, judgment, or decree issued in
43 14 connection with the offering by a state securities regulator,
43 15 the securities and exchange commission, or a court.

43 16 4. INCORPORATION BY REFERENCE. A record filed under this
43 17 chapter or its predecessor chapter within five years preceding
43 18 the filing of a registration statement may be incorporated by
43 19 reference in the registration statement to the extent that the
43 20 record is currently accurate.

43 21 5. NONISSUER DISTRIBUTION. In the case of a nonissuer
43 22 distribution, information or a record shall not be required
43 23 under subsection 9 or section 502.304, unless it is known to
43 24 the person filing the registration statement or to the person
43 25 on whose behalf the distribution is to be made or unless it
43 26 can be furnished by those persons without unreasonable effort
43 27 or expense.

43 28 6. ESCROW AND IMPOUNDMENT. A rule adopted or order issued
43 29 under this chapter may require as a condition of registration
43 30 that a security issued within the previous five years or to be
43 31 issued to a promoter for a consideration substantially less
43 32 than the public offering price or to a person for a
43 33 consideration other than cash be deposited in escrow; and that
43 34 the proceeds from the sale of the registered security in this
43 35 state be impounded until the issuer receives a specified
44 1 amount from the sale of the security either in this state or
44 2 elsewhere. The conditions of any escrow or impoundment
44 3 required under this subsection may be established by rule
44 4 adopted or order issued under this chapter, but the
44 5 administrator shall not reject a depository institution solely
44 6 because of its location in another state.

44 7 7. FORM OF SUBSCRIPTION. A rule adopted or order issued
44 8 under this chapter may require as a condition of registration
44 9 that a security registered under this chapter be sold only on
44 10 a specified form of subscription or sale contract and that a

44 11 signed or conformed copy of each contract be filed under this
44 12 chapter or preserved for a period specified by the rule or
44 13 order, which shall not be longer than five years.
44 14 8. EFFECTIVE PERIOD. Except while a stop order is in
44 15 effect under section 502.306, a registration statement is
44 16 effective for one year after its effective date, or for any
44 17 longer period designated in an order issued under this chapter
44 18 during which the security is being offered or distributed in a
44 19 nonexempted transaction by or for the account of the issuer or
44 20 other person on whose behalf the offering is being made or by
44 21 an underwriter or broker-dealer that is still offering part of
44 22 an unsold allotment or subscription taken as a participant in
44 23 the distribution. For the purposes of a nonissuer
44 24 transaction, all outstanding securities of the same class
44 25 identified in the registration statement as a security
44 26 registered under this chapter are considered to be registered
44 27 while the registration statement is effective. If any
44 28 securities of the same class are outstanding, a registration
44 29 statement shall not be withdrawn until one year after its
44 30 effective date. A registration statement may be withdrawn
44 31 only with the approval of the administrator.

44 32 9. PERIODIC REPORTS. While a registration statement is
44 33 effective, a rule adopted or order issued under this chapter
44 34 may require the person that filed the registration statement
44 35 to file reports, not more often than quarterly, to keep the
45 1 information or other record in the registration statement
45 2 reasonably current and to disclose the progress of the
45 3 offering.

45 4 10. POSTEFFECTIVE AMENDMENTS. A registrant who sold
45 5 securities to persons in this state in excess of the amount of
45 6 securities registered in this state at the time of the sale
45 7 may file an amendment to its registration statement to
45 8 register the additional securities. All of the following
45 9 requirements shall apply:

45 10 a. If a registrant proposes to sell securities to persons
45 11 in this state pursuant to a registration statement that is
45 12 currently effective in this state in an amount that exceeds
45 13 the amount registered in this state, the registrant must do
45 14 all of the following:

45 15 (1) File an amendment to register the additional
45 16 securities.

45 17 (2) Pay an additional filing fee in the same amount as
45 18 specified by subsection 2 as though the amendment constitutes
45 19 a separate issue.

45 20 b. If a registrant sold securities to persons in this
45 21 state in excess of the amount registered in this state at that
45 22 time, the registrant must do all of the following:

45 23 (1) File an amendment to register the additional
45 24 securities.

45 25 (2) Pay an additional filing fee that is three times the
45 26 amount specified in subsection 2 as though the amendment
45 27 constitutes a separate issue.

45 28 The administrator may order the amendment effective
45 29 retroactively as of the effective date of the registration
45 30 statement that is being amended.

45 31 Sec. 15. NEW SECTION. 502.306 DENIAL, SUSPENSION, AND
45 32 REVOCATION OF SECURITIES REGISTRATION.

45 33 1. STOP ORDERS. The administrator may issue a stop order
45 34 denying effectiveness to, or suspending or revoking the
45 35 effectiveness of, a registration statement if the
46 1 administrator finds that the order is in the public interest
46 2 and that any of the following apply:

46 3 a. The registration statement as of its effective date or
46 4 before the effective date in the case of an order denying
46 5 effectiveness, an amendment under section 502.305, subsection
46 6 10, as of its effective date, or a report under section
46 7 502.305, subsection 9, is incomplete in a material respect or
46 8 contains a statement that, in the light of the circumstances
46 9 under which it was made, was false or misleading with respect
46 10 to a material fact.

46 11 b. This chapter or a rule adopted or order issued under
46 12 this chapter or a condition imposed under this chapter has
46 13 been willfully violated, in connection with the offering, by
46 14 the person filing the registration statement; by the issuer, a
46 15 partner, officer, or director of the issuer or a person having
46 16 a similar status or performing a similar function; a promoter
46 17 of the issuer; or a person directly or indirectly controlling
46 18 or controlled by the issuer; but only if the person filing the
46 19 registration statement is directly or indirectly controlled by
46 20 or acting for the issuer; or by an underwriter.

46 21 c. The security registered or sought to be registered is

46 22 the subject of a permanent or temporary injunction of a court
46 23 of competent jurisdiction or an administrative stop order or
46 24 similar order issued under any federal, foreign, or state law
46 25 other than this chapter applicable to the offering, but the
46 26 administrator shall not institute a proceeding against an
46 27 effective registration statement under this paragraph more
46 28 than one year after the date of the order or injunction on
46 29 which it is based, and the administrator shall not issue an
46 30 order under this paragraph on the basis of an order or
46 31 injunction issued under the securities act of another state
46 32 unless the order or injunction was based on conduct that would
46 33 constitute, as of the date of the order, a ground for a stop
46 34 order under this section.

46 35 d. The issuer's enterprise or method of business includes
47 1 or would include activities that are unlawful where performed.

47 2 e. With respect to a security sought to be registered
47 3 under section 502.303, there has been a failure to comply with
47 4 the undertaking required by section 502.303, subsection 2,
47 5 paragraph "d".

47 6 f. The applicant or registrant has not paid the filing
47 7 fee, but the administrator shall void the order if the
47 8 deficiency is corrected.

47 9 g. The offering is subject to any of the following:

47 10 (1) Will work or tend to work a fraud upon purchasers or
47 11 would so operate.

47 12 (2) Has been or would be made with unreasonable amounts of
47 13 underwriters' and sellers' discounts, commissions, or other
47 14 compensation, or promoters' profits or participations, or
47 15 unreasonable amounts or kinds of options.

47 16 h. The financial condition of the issuer affects or would
47 17 affect the soundness of the securities, except that
47 18 applications for registration of securities by companies which
47 19 are in the development stage shall not be denied based solely
47 20 upon the financial condition of the company. For purposes of
47 21 this rule, a "development stage company" is defined as a
47 22 company which has been in existence for five years or less.

47 23 i. A person who is an issuer, correspondent, or applicant,
47 24 as listed on the uniform application to register securities
47 25 form known as "Form U-1", has abandoned the registration
47 26 statement. The administrator may enter an order pursuant to
47 27 this paragraph if a notice of abandonment is sent to the last
47 28 known address of each person, and the person fails to take
47 29 corrective action within the time specified by the
47 30 administrator. The notice of abandonment shall state the
47 31 reasons for the administrator's action, specify the corrective
47 32 action required, and specify the time period for submitting a
47 33 response. However, the time specified shall not be less than
47 34 fifteen days.

47 35 2. ENFORCEMENT OF SUBSECTION 1, PARAGRAPH "G". To the
48 1 extent practicable, the administrator by rule adopted or order
48 2 issued under this chapter shall publish standards that provide
48 3 notice of conduct that violates subsection 1, paragraph "g".

48 4 3. INSTITUTION OF STOP ORDER. The administrator shall not
48 5 institute a stop order proceeding against an effective
48 6 registration statement on the basis of conduct or a
48 7 transaction known to the administrator when the registration
48 8 statement became effective unless the proceeding is instituted
48 9 within thirty days after the registration statement became
48 10 effective.

48 11 4. SUMMARY PROCESS. The administrator may summarily
48 12 revoke, deny, postpone, or suspend the effectiveness of a
48 13 registration statement pending final determination of an
48 14 administrative proceeding. Upon the issuance of the order,
48 15 the administrator shall promptly notify each person specified
48 16 in subsection 5 that the order has been issued, the reasons
48 17 for the revocation, denial, postponement, or suspension, and
48 18 that within fifteen days after the receipt of a request in a
48 19 record from the person the matter will be scheduled for a
48 20 hearing. If a hearing is not requested and none is ordered by
48 21 the administrator, within thirty days after the date of
48 22 service of the order, the order becomes final. If a hearing
48 23 is requested or ordered, the administrator, after notice of
48 24 and opportunity for hearing for each person subject to the
48 25 order, may modify or vacate the order or extend the order
48 26 until final determination.

48 27 5. PROCEDURAL REQUIREMENTS FOR STOP ORDER. A stop order
48 28 shall not be issued under this section without all of the
48 29 following:

48 30 a. An appropriate notice to the applicant or registrant,
48 31 the issuer, and the person on whose behalf the securities are
48 32 to be or have been offered.

48 33 b. An opportunity for hearing.
48 34 c. Findings of fact and conclusions of law in a record in
48 35 accordance with chapter 17A.
49 1 6. MODIFICATION OR VACATION OF STOP ORDER. The
49 2 administrator may modify or vacate a stop order issued under
49 3 this section if the administrator finds that the conditions
49 4 that caused its issuance have changed or that it is necessary
49 5 or appropriate in the public interest or for the protection of
49 6 investors.
49 7 Sec. 16. NEW SECTION. 502.307 WAIVER AND MODIFICATION.
49 8 The administrator may waive or modify, in whole or in part,
49 9 any or all of the requirements of sections 502.302, 502.303,
49 10 and 502.304, subsection 2, or the requirement of any
49 11 information or record in a registration statement or in a
49 12 periodic report filed pursuant to section 502.305, subsection
49 13 9.

49 14 ARTICLE 3A

49 15 TAKEOVER PROVISIONS

49 16 Sec. 17. NEW SECTION. 502.321A SPECIAL DEFINITIONS.
49 17 For the purposes of this article, unless the context
49 18 otherwise requires:

49 19 1. "Associate" means a person acting jointly or in concert
49 20 with another for the purpose of acquiring, holding or
49 21 disposing of, or exercising any voting rights attached to the
49 22 equity securities of a target company.

49 23 2. "Beneficial owner" includes, but is not limited to, any
49 24 person who directly or indirectly, through any contract,
49 25 arrangement, understanding, or relationship, has or shares the
49 26 power to vote or direct the voting of a security or has or
49 27 shares the power to dispose of or otherwise direct the
49 28 disposition of the security. A person is the beneficial owner
49 29 of securities beneficially owned by any relative or spouse or
49 30 relative of the spouse residing in the home of the person, any
49 31 trust or estate in which the person owns ten percent or more
49 32 of the total beneficial interest or serves as trustee or
49 33 executor, any corporation or entity in which the person owns
49 34 ten percent or more of the equity, and any affiliate or
49 35 associate of the person.

50 1 3. "Beneficial ownership" includes, but is not limited to,
50 2 the right, exercisable within sixty days, to acquire
50 3 securities through the exercise of options, warrants, or
50 4 rights or the conversion of convertible securities. The
50 5 securities subject to these options, warrants, rights, or
50 6 conversion privileges held by a person are outstanding for the
50 7 purpose of computing the percentage of outstanding securities
50 8 of the class owned by the person, but are not outstanding for
50 9 the purpose of computing the percentage of the class owned by
50 10 any other person.

50 11 4. "Equity security" means any stock or similar security
50 12 and includes any of the following:

50 13 a. Any security convertible, with or without
50 14 consideration, into a stock or similar security.

50 15 b. Any warrant or right to subscribe to or purchase a
50 16 stock or similar security.

50 17 c. Any security carrying a warrant or right to subscribe
50 18 to or purchase a stock or similar security.

50 19 d. Any other security which the administrator deems to be
50 20 of a similar nature and considers necessary or appropriate,
50 21 according to rules prescribed by the administrator for the
50 22 public interest and protection of investors, to be treated as
50 23 an equity security.

50 24 5. "Offeree" means the beneficial owner, who is a resident
50 25 of this state, of equity securities which an offeror offers to
50 26 acquire in connection with a takeover offer.

50 27 6. "Offeror" means a person who makes or in any manner
50 28 participates in making a takeover offer. It does not include
50 29 a supervised financial institution or broker=dealer loaning
50 30 funds to an offeror in the ordinary course of its business, or
50 31 any supervised financial institution, broker=dealer, attorney,
50 32 accountant, consultant, employee, or other person furnishing
50 33 information or advice to or performing ministerial duties for
50 34 an offeror, and who does not otherwise participate in the
50 35 takeover offer.

51 1 7. "Principal place of business" means the executive
51 2 office of a target company from which the officers, partners,
51 3 or managers of the target company direct, control, and
51 4 coordinate the activities of the target company.

51 5 8. a. "Takeover offer" means the offer to acquire any
51 6 equity securities of a target company from a resident of this
51 7 state pursuant to a tender offer or request or invitation for
51 8 tenders, if after the acquisition of all securities acquired

51 9 pursuant to the offer any of the following are true:

51 10 (1) The offeror would be directly or indirectly a
51 11 beneficial owner of more than ten percent of any class of the
51 12 outstanding equity securities of the target company.

51 13 (2) The beneficial ownership by the offeror of any class
51 14 of the outstanding equity securities of the target company
51 15 would be increased by more than five percent. However, this
51 16 subparagraph subdivision does not apply if after the
51 17 acquisition of all securities acquired pursuant to the offer,
51 18 the offeror would not be directly or indirectly a beneficial
51 19 owner of more than ten percent of any class of the outstanding
51 20 equity securities of the target company.

51 21 b. "Takeover offer" does not include any of the following:

51 22 (1) An offer in connection with the acquisition of a
51 23 security which, together with all other acquisitions by the
51 24 offeror of securities of the same class of equity securities
51 25 of the target company, would not result in the offeror having
51 26 acquired more than two percent of this class of securities
51 27 during the preceding twelve-month period.

51 28 (2) An offer by the target company to acquire its own
51 29 equity securities if such offer is subject to section 13(e) of
51 30 the Securities Exchange Act of 1934.

51 31 (3) An offer in which the target company is an insurance
51 32 company or insurance holding company subject to regulation by
51 33 the commissioner of insurance, a financial institution subject
51 34 to regulation by the superintendent of banking or the
51 35 superintendent of savings and loan associations, or a public
52 1 utility subject to regulation by the utilities division of the
52 2 department of commerce.

52 3 9. "Target company" means an issuer of publicly traded
52 4 equity securities that has at least twenty percent of its
52 5 equity securities beneficially held by residents of this state
52 6 and has substantial assets in this state. For the purposes of
52 7 this chapter, an equity security is publicly traded if a
52 8 trading market exists for the security. A trading market
52 9 exists if the security is traded on a national securities
52 10 exchange, whether or not registered pursuant to the Securities
52 11 Exchange Act of 1934, or on the over-the-counter market.

52 12 Sec. 18. NEW SECTION. 502.321B REGISTRATION REQUIREMENTS
52 13 == HEARING.

52 14 1. TAKEOVER FILING REQUIRED. It is unlawful for a person
52 15 to make a takeover offer or to acquire any equity securities
52 16 pursuant to the offer unless the offer is valid under this
52 17 article. A takeover offer is effective when the offeror files
52 18 with the administrator a registration statement containing the
52 19 information prescribed in subsection 6. Not later than the
52 20 date of filing of the registration statement, the offeror
52 21 shall deliver a copy of the registration statement by
52 22 certified mail to the target company at its principal place of
52 23 business and publicly disclose the material terms of the
52 24 proposed offer. Public disclosure shall require, at a
52 25 minimum, that a copy of the registration statement be supplied
52 26 to all broker-dealers maintaining an office in this state
52 27 currently quoting the security.

52 28 2. REGISTRATION STATEMENT FILING. The registration
52 29 statement shall be filed on forms prescribed by the
52 30 administrator, and shall be accompanied by a consent by the
52 31 offeror to service of process and filing fee specified in
52 32 section 502.321G, and contain all of the following
52 33 information:

52 34 a. All information specified in subsection 6.

52 35 b. Two copies of all solicitation materials intended to be
53 1 used in the takeover offer, and in the form proposed to be
53 2 published, sent, or delivered to offerees.

53 3 c. Additional information as prescribed by the
53 4 administrator by rule, pursuant to chapter 17A, prior to the
53 5 making of the offer.

53 6 3. REGISTRATION NOT APPROVAL. Registration shall not be
53 7 considered approval by the administrator, and any
53 8 representation to the contrary is unlawful.

53 9 4. SUSPENSION AUTHORIZED. Within three calendar days of
53 10 the date of filing of the registration statement, the
53 11 administrator may, by order, summarily suspend the
53 12 effectiveness of the takeover offer if the administrator
53 13 determines that the registration does not contain all of the
53 14 information specified in subsection 6 or that the takeover
53 15 offer materials provided to offerees do not provide full
53 16 disclosure to offerees of all material information concerning
53 17 the takeover offer. The suspension shall remain in effect
53 18 only until the determination following a hearing held pursuant
53 19 to subsection 5.

53 20 5. HEARING PROCEDURES. A hearing shall be scheduled by
53 21 the administrator for each suspension provided under this
53 22 section. The hearing shall be held within ten calendar days
53 23 of the date of the suspension. The administrator's
53 24 determination following the hearing shall be made within three
53 25 calendar days after the hearing has been completed, but not
53 26 more than sixteen days after the date of the suspension.
53 27 However, the administrator may prescribe different time
53 28 periods than those specified in this subsection by rule or
53 29 order.

53 30 If, based upon the record of the hearing, the administrator
53 31 finds that the registration statement fails to provide for
53 32 full and fair disclosure of all material information
53 33 concerning the offer, or that the takeover is in violation of
53 34 any of the provisions of this article, the administrator shall
53 35 permanently suspend the effectiveness of the takeover offer.
54 1 The administrator may provide an opportunity for the offeror
54 2 to correct disclosure and other deficiencies identified by the
54 3 administrator and to reinstate the takeover offer by filing a
54 4 new or amended registration statement pursuant to this
54 5 section.

54 6 6. REQUIRED INFORMATION. The form required to be filed by
54 7 subsection 2, paragraph "a", shall contain all of the
54 8 following information:

54 9 a. The identity and background of all persons on whose
54 10 behalf the acquisition of any equity security of the target
54 11 company has been or is to be effected.

54 12 b. The source and amount of funds or other consideration
54 13 used or to be used in acquiring any equity security including,
54 14 if applicable, a statement describing any securities which are
54 15 being offered in exchange for the equity securities of the
54 16 target company. If any part of the acquisition price is or
54 17 will be represented by borrowed funds or other consideration,
54 18 the information shall also include a description of the
54 19 material terms of any financing arrangements and the names of
54 20 the parties from whom the funds were or are to be borrowed.

54 21 c. If the offeror is other than a natural person,
54 22 information concerning its organization and operations,
54 23 including all of the following:

54 24 (1) The year, form, and jurisdiction of its organization.

54 25 (2) A description of each class of equity security and
54 26 long-term debt.

54 27 (3) A description of the business conducted by the offeror
54 28 and its subsidiaries and any material changes in the offeror
54 29 or subsidiaries during the past three years.

54 30 (4) A description of the location and character of the
54 31 principal properties of the offeror and its subsidiaries.

54 32 (5) A description of any pending and material legal or
54 33 administrative proceedings in which the offeror or any of its
54 34 affiliates is a party.

54 35 (6) The names of all directors and executive officers of
55 1 the offeror and their material business activities and
55 2 affiliations during the past five years.

55 3 (7) The financial statements of the offeror in a form and
55 4 for periods of time as the administrator may prescribe by rule
55 5 pursuant to section 17A.4, subsection 1.

55 6 d. If the offeror is a natural person, information
55 7 concerning the offeror's identity and background, including
55 8 business activities and affiliations during the past five
55 9 years and a description of any pending and material legal or
55 10 administrative proceedings in which the offeror is a party.

55 11 e. If the purpose of the acquisition is to gain control of
55 12 the target company, the material terms of any plans or
55 13 proposals which the offeror has, upon gaining control, to do
55 14 any of the following:

55 15 (1) Liquidate the target company.

55 16 (2) Sell its assets.

55 17 (3) Effect its merger or consolidation.

55 18 (4) Change the location of its principal place of business
55 19 or of a material portion of its business activities.

55 20 (5) Change its management or policies of employment.

55 21 (6) Materially alter its relationship with suppliers or
55 22 customers or the community in which it operates.

55 23 (7) Make any other major changes in its business,
55 24 corporate structure, management, or personnel.

55 25 (8) Other information which would materially affect the
55 26 shareholders' evaluation of the acquisition.

55 27 f. The number of shares or units of any equity security of
55 28 the target company owned beneficially by the offeror and any
55 29 affiliate or associate of the offeror, together with the name
55 30 and address of each affiliate or associate.

55 31 g. The material terms of any contract, arrangement, or
55 32 understanding with any other person with respect to the equity
55 33 securities of the target company by which the offeror has or
55 34 will acquire any interest in additional equity securities of
55 35 the target company, or is or will be obligated to transfer any
56 1 interest in the equity securities to another.

56 2 h. Information required to be included in a tender offer
56 3 statement pursuant to section 14(d) of the Securities Exchange
56 4 Act of 1934 and the rules and regulations of the securities
56 5 and exchange commission issued pursuant to the Act.

56 6 Sec. 19. NEW SECTION. 502.321C FILING OF SOLICITATION
56 7 MATERIALS.

56 8 Copies of all advertisements, circulars, letters, or other
56 9 materials disseminated by the offeror or the target company,
56 10 soliciting or requesting the acceptance or rejection of a
56 11 takeover offer, shall be filed with the administrator and sent
56 12 to the target company or offeror not later than the time the
56 13 solicitation or request materials are first published, sent,
56 14 or given to the offerees. The administrator may prohibit the
56 15 use of any materials deemed false or misleading.

56 16 Sec. 20. NEW SECTION. 502.321D FRAUDULENT, DECEPTIVE, OR
56 17 MANIPULATIVE ACTS AND PRACTICES PROHIBITED.

56 18 An offeror, target company, affiliate or associate of an
56 19 offeror or target company, or broker-dealer acting on behalf
56 20 of an offeror or target company shall not engage in a
56 21 fraudulent, deceptive, or manipulative act or practice in
56 22 connection with a takeover offer. For purposes of this
56 23 section, a fraudulent, deceptive, or manipulative act or
56 24 practice includes, but is not limited to, any of the
56 25 following:

56 26 1. The publication or use in connection with a takeover
56 27 offer of a false statement of a material fact, or the omission
56 28 of a material fact which renders the statements made
56 29 misleading.

56 30 2. The purchase of any of the equity securities of an
56 31 officer, director, or beneficial owner of five percent or more
56 32 of the equity securities of the target company by the offeror
56 33 or the target company for a consideration greater than that to
56 34 be paid to other shareholders, unless the terms of the
56 35 purchase are disclosed in a registration statement filed
57 1 pursuant to section 502.321B.

57 2 3. The refusal by a target company to permit an offeror
57 3 who is a shareholder of record to examine or copy its list of
57 4 shareholders, pursuant to the applicable corporation statutes,
57 5 for the purpose of making a takeover offer.

57 6 4. The refusal by a target company to mail any
57 7 solicitation materials published by the offeror to its
57 8 security holders with reasonable promptness after receipt from
57 9 the offeror of the materials, together with the reasonable
57 10 expenses of postage and handling.

57 11 5. The solicitation of any offeree for acceptance or
57 12 rejection of a takeover offer, or acquisition of any equity
57 13 security pursuant to a takeover offer, when the offer is
57 14 suspended under section 502.321B, provided, however, that the
57 15 target company may communicate during a suspension with its
57 16 equity security holders to the extent required to respond to
57 17 the takeover offer made pursuant to the Securities Exchange
57 18 Act of 1934.

57 19 Sec. 21. NEW SECTION. 502.321E LIMITATIONS ON OFFERS AND
57 20 OFFERORS.

57 21 1. SAME TERMS REQUIRED. A takeover offer shall contain
57 22 substantially the same terms for shareholders residing within
57 23 and outside this state.

57 24 2. OFFEREE WITHDRAWAL OF SECURITIES. An offeror shall
57 25 provide that any equity securities of a target company
57 26 deposited or tendered pursuant to a takeover offer may be
57 27 withdrawn by or on behalf of an offeree within seven days
57 28 after the date the offer has become effective and after sixty
57 29 days from the date the offer has become effective, or as
57 30 otherwise determined by the administrator pursuant to a rule
57 31 or order issued for the protection of the shareholders.

57 32 3. PRO RATA ACCEPTANCE. If an offeror makes a takeover
57 33 offer for less than all the outstanding equity securities of
57 34 any class and, within ten days after the offer has become
57 35 effective and copies of the offer, or notice of any increase
58 1 in the consideration offered, are first published or sent or
58 2 given to equity security holders, the number of securities
58 3 deposited or tendered pursuant to the offer is greater than
58 4 the number of securities that the offeror has offered to
58 5 accept and pay for, the securities shall be accepted pro rata,
58 6 disregarding fractions, according to the number of securities

58 7 deposited or tendered for each offeree.
58 8 4. INCREASED CONSIDERATION. If an offeror varies the
58 9 terms of a takeover offer before the offer's expiration date
58 10 by increasing the consideration offered to equity security
58 11 holders, the offeror shall pay the increased consideration for
58 12 all equity securities accepted, whether the securities have
58 13 been accepted by the offeror before or after the variation in
58 14 the terms of the offer.

58 15 5. PROCEEDINGS == STOP OFFERS OR ACQUISITIONS. An offeror
58 16 shall not make a takeover offer or acquire any equity
58 17 securities in this state pursuant to a takeover offer during
58 18 the period of time that an administrator's proceeding alleging
58 19 a violation of this chapter is pending against the offeror.

58 20 6. PROCEEDINGS == HALT MOVING OF TARGET COMPANY ASSETS.
58 21 An offeror shall not acquire, remove, or exercise control,
58 22 directly or indirectly, over any target company assets located
58 23 in this state pursuant to a takeover offer during the period
58 24 of time that an administrator's proceeding alleging a
58 25 violation of this chapter is pending against the offeror.

58 26 7. ACQUISITIONS SUBSEQUENT TO TAKEOVER PURCHASES. An
58 27 offeror shall not acquire from a resident of this state an
58 28 equity security of any class of a target company at any time
58 29 within two years following the last purchase of securities
58 30 pursuant to a takeover offer with respect to that class,
58 31 including, but not limited to, acquisitions made by purchase,
58 32 exchange, merger, consolidation, partial or complete
58 33 liquidation, redemption, reverse stock split,
58 34 recapitalization, reorganization, or any other similar
58 35 transaction, unless the holders of the equity securities are
59 1 afforded, at the time of the acquisition, a reasonable
59 2 opportunity to dispose of the securities to the offeror upon
59 3 substantially equivalent terms as those provided in the
59 4 earlier takeover offer.

59 5 Sec. 22. NEW SECTION. 502.321F ADMINISTRATION == RULES
59 6 AND ORDERS.

59 7 1. EXEMPTION AUTHORITY. The administrator may by rule or
59 8 order exempt from any provision of this article the following:

59 9 a. A proposed takeover offer or a category or type of
59 10 takeover offer which the administrator determines does not
59 11 have the purpose or effect of changing or influencing the
59 12 control of a target company.

59 13 b. A proposed takeover offer for which the administrator
59 14 determines that compliance with the sections is not necessary
59 15 for the protection of the offerees.

59 16 c. A person from the requirement of filing statements.

59 17 2. In the event of a conflict between the provisions of
59 18 chapter 17A and the provisions of this article, the provisions
59 19 of this article shall prevail.

59 20 Sec. 23. NEW SECTION. 502.321G FEES.

59 21 The administrator shall charge a nonrefundable filing fee
59 22 of two hundred fifty dollars for a registration statement
59 23 filed by an offeror.

59 24 Sec. 24. NEW SECTION. 502.321H NONAPPLICATION OF
59 25 CORPORATE TAKEOVER LAW.

59 26 If the target company is a public utility, public utility
59 27 holding company, national banking association, bank holding
59 28 company, or savings and loan association which is subject to
59 29 regulation by a federal agency and the takeover of such
59 30 company is subject to approval by the federal agency, this
59 31 article does not apply.

59 32 Sec. 25. NEW SECTION. 502.321I APPLICATION OF SECURITIES
59 33 LAW.

59 34 All of the provisions of this chapter which are not in
59 35 conflict with this article apply to any takeover offer
60 1 involving a target company.

60 2 ARTICLE 4
60 3 BROKER=DEALERS, AGENTS, INVESTMENT ADVISERS,
60 4 INVESTMENT ADVISER REPRESENTATIVES,
60 5 AND FEDERAL COVERED INVESTMENT ADVISERS

60 6 Sec. 26. Section 502.401, Code 2003, is amended by
60 7 striking the section and inserting in lieu thereof the
60 8 following:

60 9 502.401 BROKER=DEALER REGISTRATION REQUIREMENT AND
60 10 EXEMPTIONS.

60 11 1. REGISTRATION REQUIREMENT. It is unlawful for a person
60 12 to transact business in this state as a broker=dealer unless
60 13 the person is registered under this chapter as a broker=dealer
60 14 or is exempt from registration as a broker=dealer under
60 15 subsection 2 or 4.

60 16 2. EXEMPTIONS FROM REGISTRATION. The following persons
60 17 are exempt from the registration requirement of subsection 1:

60 18 a. A broker=dealer without a place of business in this
60 19 state if its only transactions effected in this state are with
60 20 any of the following:

60 21 (1) The issuer of the securities involved in the
60 22 transactions.

60 23 (2) A broker=dealer registered as a broker=dealer under
60 24 this chapter or not required to be registered as a broker=
60 25 dealer under this chapter.

60 26 (3) An institutional investor.

60 27 (4) A nonaffiliated federal covered investment adviser
60 28 with investments under management in excess of one hundred
60 29 million dollars acting for the account of others pursuant to
60 30 discretionary authority in a signed record.

60 31 (5) A bona fide preexisting customer whose principal place
60 32 of residence is not in this state and the broker=dealer is
60 33 registered as a broker=dealer under the Securities Exchange
60 34 Act of 1934 or not required to be registered under the
60 35 Securities Exchange Act of 1934 and is registered under the
61 1 securities act of the state in which the customer maintains a
61 2 principal place of residence.

61 3 (6) A bona fide preexisting customer whose principal place
61 4 of residence is in this state but was not present in this
61 5 state when the customer relationship was established, if all
61 6 of the following apply:

61 7 (a) The broker=dealer is registered under the Securities
61 8 Exchange Act of 1934 or not required to be registered under
61 9 the Securities Exchange Act of 1934 and is registered under
61 10 the securities laws of the state in which the customer
61 11 relationship was established and where the customer had
61 12 maintained a principal place of residence.

61 13 (b) Within forty=five days after the customer's first
61 14 transaction in this state, the broker=dealer files an
61 15 application for registration as a broker=dealer in this state
61 16 and a further transaction is not effected more than seventy=
61 17 five days after the date on which the application is filed,
61 18 or, if earlier, the date on which the administrator notifies
61 19 the broker=dealer that the administrator has denied the
61 20 application for registration or has stayed the pendency of the
61 21 application for good cause.

61 22 (7) Not more than three customers in this state during the
61 23 previous twelve months, in addition to those customers
61 24 specified in this paragraph "a", if the broker=dealer is
61 25 registered under the Securities Exchange Act of 1934 or not
61 26 required to be registered under the Securities Exchange Act of
61 27 1934 and is registered under the securities act of the state
61 28 in which the broker=dealer has its principal place of
61 29 business.

61 30 (8) Any other person exempted by rule adopted or order
61 31 issued under this chapter.

61 32 b. A person that deals solely in United States government
61 33 securities and is supervised as a dealer in government
61 34 securities by the board of governors of the federal reserve
61 35 system, the comptroller of the currency, the federal deposit
62 1 insurance corporation, or the office of thrift supervision.

62 2 3. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful
62 3 for a broker=dealer, or for an issuer engaged in offering,
62 4 offering to purchase, purchasing, or selling securities in
62 5 this state, directly or indirectly, to employ or associate
62 6 with an individual to engage in an activity related to
62 7 securities transactions in this state if the registration of
62 8 the individual is suspended or revoked or the individual is
62 9 barred from employment or association with a broker=dealer, an
62 10 issuer, an investment adviser, or a federal covered investment
62 11 adviser by an order of the administrator under this chapter,
62 12 the securities and exchange commission, or a self=regulatory
62 13 organization. A broker=dealer or issuer does not violate this
62 14 subsection if the broker=dealer or issuer did not know, and in
62 15 the exercise of reasonable care could not have known, of the
62 16 suspension, revocation, or bar. Upon request from a broker=
62 17 dealer or issuer and for good cause, an order under this
62 18 chapter may modify or waive, in whole or in part, the
62 19 application of the prohibitions of this subsection to the
62 20 broker=dealer or issuer.

62 21 4. FOREIGN TRANSACTIONS. A rule adopted or order issued
62 22 under this chapter may permit any of the following:

62 23 a. A broker=dealer that is registered in Canada or other
62 24 foreign jurisdiction and that does not have a place of
62 25 business in this state to effect transactions in securities
62 26 with or for, or attempt to effect the purchase or sale of any
62 27 securities by, any of the following:

62 28 (1) An individual from Canada or other foreign

62 29 jurisdiction who is temporarily present in this state and with
62 30 whom the broker-dealer had a bona fide customer relationship
62 31 before the individual entered the United States.

62 32 (2) An individual from Canada or other foreign
62 33 jurisdiction who is present in this state and whose
62 34 transactions are in a self-directed tax advantaged retirement
62 35 plan of which the individual is the holder or contributor in
63 1 that foreign jurisdiction.

63 2 (3) An individual who is present in this state, with whom
63 3 the broker-dealer customer relationship arose while the
63 4 individual was temporarily or permanently residing in Canada
63 5 or the other foreign jurisdiction.

63 6 b. An agent who represents a broker-dealer that is exempt
63 7 under this subsection to effect transactions in securities or
63 8 attempt to effect the purchase or sale of securities in this
63 9 state as permitted for a broker-dealer described in paragraph
63 10 "a".

63 11 Sec. 27. Section 502.402, Code 2003, is amended by
63 12 striking the section and inserting in lieu thereof the
63 13 following:

63 14 502.402 AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS.

63 15 1. REGISTRATION REQUIREMENT. It is unlawful for an
63 16 individual to transact business in this state as an agent
63 17 unless the individual is registered under this chapter as an
63 18 agent or is exempt from registration as an agent under
63 19 subsection 2.

63 20 2. EXEMPTIONS FROM REGISTRATION. The following
63 21 individuals are exempt from the registration requirement of
63 22 subsection 1:

63 23 a. An individual who represents a broker-dealer in
63 24 effecting transactions in this state limited to those
63 25 described in section 15(h)(2) of the Securities Exchange Act
63 26 of 1934, 15 U.S.C. } 78(o)(2).

63 27 b. An individual who represents a broker-dealer that is
63 28 exempt under section 502.401, subsection 2 or 4.

63 29 c. An individual who represents an issuer with respect to
63 30 an offer or sale of the issuer's own securities or those of
63 31 the issuer's parent or any of the issuer's subsidiaries, and
63 32 who is not compensated in connection with the individual's
63 33 participation by the payment of commissions or other
63 34 remuneration based, directly or indirectly, on transactions in
63 35 those securities.

64 1 d. An individual who represents an issuer and who effects
64 2 transactions in the issuer's securities exempted by section
64 3 502.202, other than section 502.202, subsection 11 or 14.

64 4 e. An individual who represents an issuer that effects
64 5 transactions solely in federal covered securities of the
64 6 issuer, but an individual who effects transactions in a
64 7 federal covered security under section 18(b)(3) or 18(b)(4)(D)
64 8 of the Securities Act of 1933, 15 U.S.C. } 77r(b)(3) or
64 9 77r(b)(4)(D), is not exempt if the individual is compensated
64 10 in connection with the agent's participation by the payment of
64 11 commissions or other remuneration based, directly or
64 12 indirectly, on transactions in those securities.

64 13 f. An individual who represents a broker-dealer registered
64 14 in this state under section 502.401, subsection 1, or exempt
64 15 from registration under section 502.401, subsection 2, in the
64 16 offer and sale of securities for an account of a nonaffiliated
64 17 federal covered investment adviser with investments under
64 18 management in excess of one hundred million dollars acting for
64 19 the account of others pursuant to discretionary authority in a
64 20 signed record.

64 21 g. An individual who represents an issuer in connection
64 22 with the purchase of the issuer's own securities.

64 23 h. An individual who represents an issuer and who
64 24 restricts participation to performing clerical or ministerial
64 25 acts.

64 26 i. Any other individual exempted by rule adopted or order
64 27 issued under this chapter.

64 28 3. REGISTRATION EFFECTIVE ONLY WHILE EMPLOYED OR
64 29 ASSOCIATED. The registration of an agent is effective only
64 30 while the agent is employed by or associated with a broker=
64 31 dealer registered under this chapter or an issuer that is
64 32 offering, selling, or purchasing its securities in this state.

64 33 4. LIMIT ON EMPLOYMENT OR ASSOCIATION. It is unlawful for
64 34 a broker-dealer, or an issuer engaged in offering, selling, or
64 35 purchasing securities in this state, to employ or associate
65 1 with an agent who transacts business in this state on behalf
65 2 of broker-dealers or issuers unless the agent is registered
65 3 under subsection 1 or exempt from registration under
65 4 subsection 2.

65 5 5. LIMIT ON AFFILIATIONS. An individual shall not act as
65 6 an agent for more than one broker-dealer or one issuer at a
65 7 time, unless the broker-dealer or the issuer for which the
65 8 agent acts is affiliated by direct or indirect common control
65 9 or is authorized by rule or order under this chapter.

65 10 Sec. 28. Section 502.403, Code 2003, is amended by
65 11 striking the sections and inserting in lieu thereof the
65 12 following:

65 13 502.403 INVESTMENT ADVISER REGISTRATION REQUIREMENT AND
65 14 EXEMPTIONS.

65 15 1. REGISTRATION REQUIREMENT. It is unlawful for a person
65 16 to transact business in this state as an investment adviser
65 17 unless the person is registered under this chapter as an
65 18 investment adviser or is exempt from registration as an
65 19 investment adviser under subsection 2.

65 20 2. EXEMPTIONS FROM REGISTRATION. All of the following
65 21 persons are exempt from the registration requirement of
65 22 subsection 1:

65 23 a. A person without a place of business in this state that
65 24 is registered under the securities act of the state in which
65 25 the person has its principal place of business if its only
65 26 clients in this state are any of the following:

65 27 (1) Federal covered investment advisers, investment
65 28 advisers registered under this chapter, or broker-dealers
65 29 registered under this chapter.

65 30 (2) Institutional investors.

65 31 (3) Bona fide preexisting clients whose principal places
65 32 of residence are not in this state if the investment adviser
65 33 is registered under the securities act of the state in which
65 34 the clients maintain principal places of residence.

65 35 (4) Any other client exempted by rule adopted or order
66 1 issued under this chapter.

66 2 b. A person without a place of business in this state if
66 3 the person has had, during the preceding twelve months, not
66 4 more than five clients that are resident in this state in
66 5 addition to those specified under paragraph "a".

66 6 c. Any other person exempted by rule adopted or order
66 7 issued under this chapter.

66 8 3. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful
66 9 for an investment adviser, directly or indirectly, to employ
66 10 or associate with an individual to engage in an activity
66 11 related to investment advice in this state if the registration
66 12 of the individual is suspended or revoked or the individual is
66 13 barred from employment or association with an investment
66 14 adviser, federal covered investment adviser, or broker-dealer
66 15 by an order under this chapter, the securities and exchange
66 16 commission, or a self-regulatory organization, unless the
66 17 investment adviser did not know, and in the exercise of
66 18 reasonable care could not have known, of the suspension,
66 19 revocation, or bar. Upon request from the investment adviser
66 20 and for good cause, the administrator, by order, may waive, in
66 21 whole or in part, the application of the prohibitions of this
66 22 subsection to the investment adviser.

66 23 4. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION
66 24 REQUIRED. It is unlawful for an investment adviser to employ
66 25 or associate with an individual required to be registered
66 26 under this chapter as an investment adviser representative who
66 27 transacts business in this state on behalf of the investment
66 28 adviser unless the individual is registered under section
66 29 502.404, subsection 1, or is exempt from registration under
66 30 section 502.404, subsection 2.

66 31 Sec. 29. Section 502.404, Code 2003, is amended by
66 32 striking the section and inserting in lieu thereof the
66 33 following:

66 34 502.404 INVESTMENT ADVISER REPRESENTATIVE REGISTRATION
66 35 REQUIREMENT AND EXEMPTIONS.

67 1 1. REGISTRATION REQUIREMENT. It is unlawful for an
67 2 individual to transact business in this state as an investment
67 3 adviser representative unless the individual is registered
67 4 under this chapter as an investment adviser representative or
67 5 is exempt from registration as an investment adviser
67 6 representative under subsection 2.

67 7 2. EXEMPTIONS FROM REGISTRATION. All of the following
67 8 individuals are exempt from the registration requirement of
67 9 subsection 1:

67 10 a. An individual who is employed by or associated with an
67 11 investment adviser that is exempt from registration under
67 12 section 502.403, subsection 2, or a federal covered investment
67 13 adviser that is excluded from the notice filing requirements
67 14 of section 502.405.

67 15 b. Any other individual exempted by rule adopted or order

67 16 issued under this chapter.

67 17 3. REGISTRATION EFFECTIVE ONLY WHILE EMPLOYED OR
67 18 ASSOCIATED. The registration of an investment adviser
67 19 representative is not effective while the investment adviser
67 20 representative is not employed by or associated with an
67 21 investment adviser registered under this chapter or a federal
67 22 covered investment adviser that has made or is required to
67 23 make a notice filing under section 502.405.

67 24 4. LIMIT ON AFFILIATIONS. An individual may transact
67 25 business as an investment adviser representative for more than
67 26 one investment adviser or federal covered investment adviser
67 27 unless a rule adopted or order issued under this chapter
67 28 prohibits or limits an individual from acting as an investment
67 29 adviser representative for more than one investment adviser or
67 30 federal covered investment adviser.

67 31 5. LIMITS ON EMPLOYMENT OR ASSOCIATION. It is unlawful
67 32 for an individual acting as an investment adviser
67 33 representative, directly or indirectly, to conduct business in
67 34 this state on behalf of an investment adviser or a federal
67 35 covered investment adviser if the registration of the
68 1 individual as an investment adviser representative is
68 2 suspended or revoked or the individual is barred from
68 3 employment or association with an investment adviser or a
68 4 federal covered investment adviser by an order under this
68 5 chapter, the securities and exchange commission, or a self=
68 6 regulatory organization. Upon request from a federal covered
68 7 investment adviser and for good cause, the administrator, by
68 8 order issued, may waive, in whole or in part, the application
68 9 of the requirements of this subsection to the federal covered
68 10 investment adviser.

68 11 6. REFERRAL FEES. An investment adviser registered under
68 12 this chapter, a federal covered investment adviser that has
68 13 filed a notice under section 502.405, or a broker=dealer
68 14 registered under this chapter is not required to employ or
68 15 associate with an individual as an investment adviser
68 16 representative if the only compensation paid to the individual
68 17 for a referral of investment advisory clients is paid to an
68 18 investment adviser registered under this chapter, a federal
68 19 covered investment adviser who has filed a notice under
68 20 section 502.405, or a broker=dealer registered under this
68 21 chapter with whom the individual is employed or associated as
68 22 an investment adviser representative.

68 23 Sec. 30. Section 502.405, Code 2003, is amended by
68 24 striking the section and inserting in lieu thereof the
68 25 following:

68 26 502.405 FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING
68 27 REQUIREMENT.

68 28 1. NOTICE FILING REQUIREMENT. Except with respect to a
68 29 federal covered investment adviser described in subsection 2,
68 30 it is unlawful for a federal covered investment adviser to
68 31 transact business in this state as a federal covered
68 32 investment adviser unless the federal covered investment
68 33 adviser complies with subsection 3.

68 34 2. NOTICE FILING REQUIREMENT NOT REQUIRED. The following
68 35 federal covered investment advisers are not required to comply
69 1 with subsection 3:

69 2 a. A federal covered investment adviser without a place of
69 3 business in this state if its only clients in this state are
69 4 any of the following:

69 5 (1) Federal covered investment advisers, investment
69 6 advisers registered under this chapter, and broker=dealers
69 7 registered under this chapter.

69 8 (2) Institutional investors.

69 9 (3) Bona fide preexisting clients whose principal places
69 10 of residence are not in this state.

69 11 (4) Other clients specified by rule adopted or order
69 12 issued under this chapter.

69 13 b. A federal covered investment adviser without a place of
69 14 business in this state if the person has had, during the
69 15 preceding twelve months, not more than five clients that are
69 16 resident in this state in addition to those specified under
69 17 paragraph "a".

69 18 c. Any other person excluded by rule adopted or order
69 19 issued under this chapter.

69 20 3. NOTICE FILING PROCEDURE. A person acting as a federal
69 21 covered investment adviser, not excluded under subsection 2,
69 22 shall file a notice, a consent to service of process complying
69 23 with section 502.611, and such records as have been filed with
69 24 the securities and exchange commission under the Investment
69 25 Advisers Act of 1940 required by rule adopted or order issued
69 26 under this chapter and pay the fees specified in section

69 27 502.410, subsection 5.
69 28 4. EFFECTIVENESS OF FILING. The notice under subsection 3
69 29 becomes effective upon its filing.
69 30 Sec. 31. Section 502.406, Code 2003, is amended by
69 31 striking the section and inserting in lieu thereof the
69 32 following:
69 33 502.406 REGISTRATION BY BROKER=DEALER, AGENT, INVESTMENT
69 34 ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE.
69 35 1. APPLICATION FOR INITIAL REGISTRATION. A person shall
70 1 register as a broker=dealer, agent, investment adviser, or
70 2 investment adviser representative by filing an application and
70 3 a consent to service of process complying with section
70 4 502.611, and paying the fee specified in section 502.410 and
70 5 any reasonable fees charged by the designee of the
70 6 administrator for processing the filing. The application must
70 7 contain all of the following:
70 8 a. The information or record required for the filing of a
70 9 uniform application.
70 10 b. Upon request by the administrator, any other financial
70 11 or other information or record that the administrator
70 12 determines is appropriate.
70 13 2. AMENDMENT. If the information or record contained in
70 14 an application filed under subsection 1 is or becomes
70 15 inaccurate or incomplete in a material respect, the registrant
70 16 shall promptly file a correcting amendment.
70 17 3. EFFECTIVENESS OF REGISTRATION. If an order is not in
70 18 effect and a proceeding is not pending under section 502.412,
70 19 registration becomes effective at noon on the forty=fifth day
70 20 after a completed application is filed, unless the
70 21 registration is denied. A rule adopted or order issued under
70 22 this chapter may set an earlier effective date or may defer
70 23 the effective date until noon on the forty=fifth day after the
70 24 filing of any amendment completing the application.
70 25 4. REGISTRATION RENEWAL. A registration is effective
70 26 until midnight on December 31 of the year for which the
70 27 application for registration is filed. Unless an order is in
70 28 effect under section 502.412, a registration may be
70 29 automatically renewed each year by filing such records as are
70 30 required by rule adopted or order issued under this chapter,
70 31 by paying the fee specified in section 502.410, and by paying
70 32 costs charged by the designee of the administrator for
70 33 processing the filings.
70 34 5. ADDITIONAL CONDITIONS OR WAIVERS. A rule adopted or
70 35 order issued under this chapter may impose such other
71 1 conditions, not inconsistent with the National Securities
71 2 Markets Improvement Act of 1996. An order issued under this
71 3 chapter may waive, in whole or in part, specific requirements
71 4 in connection with registration as are in the public interest
71 5 and for the protection of investors.
71 6 Sec. 32. Section 502.407, Code 2003, is amended by
71 7 striking the section and inserting in lieu thereof the
71 8 following:
71 9 502.407 SUCCESSION AND CHANGE IN REGISTRATION OF BROKER=
71 10 DEALER OR INVESTMENT ADVISER.
71 11 1. SUCCESSION. A broker=dealer or investment adviser may
71 12 succeed to the current registration of another broker=dealer
71 13 or investment adviser or a notice filing of a federal covered
71 14 investment adviser, and a federal covered investment adviser
71 15 may succeed to the current registration of an investment
71 16 adviser or notice filing of another federal covered investment
71 17 adviser, by filing as a successor an application for
71 18 registration pursuant to section 502.401 or 502.403 or a
71 19 notice pursuant to section 502.405 for the unexpired portion
71 20 of the current registration or notice filing.
71 21 2. ORGANIZATIONAL CHANGE. A broker=dealer or investment
71 22 adviser that changes its form of organization or state of
71 23 incorporation or organization may continue its registration by
71 24 filing an amendment to its registration if the change does not
71 25 involve a material change in its financial condition or
71 26 management. The amendment becomes effective when filed or on
71 27 a date designated by the registrant in its filing. The new
71 28 organization is a successor to the original registrant for the
71 29 purposes of this chapter. If there is a material change in
71 30 financial condition or management, the broker=dealer or
71 31 investment adviser shall file a new application for
71 32 registration. A predecessor registered under this chapter
71 33 shall stop conducting its securities business other than
71 34 winding down transactions and shall file for withdrawal of
71 35 broker=dealer or investment adviser registration within forty=
72 1 five days after filing its amendment to effect succession.
72 2 3. NAME CHANGE. A broker=dealer or investment adviser

72 3 that changes its name may continue its registration by filing
72 4 an amendment to its registration. The amendment becomes
72 5 effective when filed or on a date designated by the
72 6 registrant.

72 7 4. CHANGE OF CONTROL. A change of control of a broker=
72 8 dealer or investment adviser may be made in accordance with a
72 9 rule adopted or order issued under this chapter.

72 10 Sec. 33. Section 502.408, Code 2003, is amended by
72 11 striking the section and inserting in lieu thereof the
72 12 following:

72 13 502.408 TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENT
72 14 AND INVESTMENT ADVISER REPRESENTATIVE AND TRANSFER OF
72 15 EMPLOYMENT OR ASSOCIATION.

72 16 1. NOTICE OF TERMINATION. If an agent registered under
72 17 this chapter terminates employment by or association with a
72 18 broker-dealer or issuer, or if an investment adviser
72 19 representative registered under this chapter terminates
72 20 employment by or association with an investment adviser or
72 21 federal covered investment adviser, or if either registrant
72 22 terminates activities that require registration as an agent or
72 23 investment adviser representative, the broker-dealer, issuer,
72 24 investment adviser, or federal covered investment adviser
72 25 shall promptly file a notice of termination. If the
72 26 registrant learns that the broker-dealer, issuer, investment
72 27 adviser, or federal covered investment adviser has not filed
72 28 the notice, the registrant may do so.

72 29 2. TRANSFER OF EMPLOYMENT OR ASSOCIATION. If an agent
72 30 registered under this chapter terminates employment by or
72 31 association with a broker-dealer registered under this chapter
72 32 and begins employment by or association with another broker=
72 33 dealer registered under this chapter, or if an investment
72 34 adviser representative registered under this chapter
72 35 terminates employment by or association with an investment
73 1 adviser registered under this chapter or a federal covered
73 2 investment adviser that has filed a notice under section
73 3 502.405 and begins employment by or association with another
73 4 investment adviser registered under this chapter or a federal
73 5 covered investment adviser that has filed a notice under
73 6 section 502.405, then upon the filing by or on behalf of the
73 7 registrant, within thirty days after the termination, of an
73 8 application for registration that complies with the
73 9 requirement of section 502.406, subsection 1, and payment of
73 10 the filing fee required under section 502.410, the
73 11 registration of the agent or investment adviser representative
73 12 is one of the following:

73 13 a. Immediately effective as of the date of the completed
73 14 filing, if the agent's central registration depository record
73 15 or successor record or the investment adviser representative's
73 16 investment adviser registration depository record or successor
73 17 record does not contain a new or amended disciplinary
73 18 disclosure within the previous twelve months.

73 19 b. Temporarily effective as of the date of the completed
73 20 filing, if the agent's central registration depository record
73 21 or successor record or the investment adviser representative's
73 22 investment adviser registration depository record or successor
73 23 record contains a new or amended disciplinary disclosure
73 24 within the preceding twelve months.

73 25 3. WITHDRAWAL OF TEMPORARY REGISTRATION. The
73 26 administrator may withdraw a temporary registration if there
73 27 are or were grounds for discipline as specified in section
73 28 502.412 and the administrator does so within thirty days after
73 29 the filing of the application. If the administrator does not
73 30 withdraw the temporary registration within the thirty-day
73 31 period, registration becomes automatically effective on the
73 32 thirty-first day after filing.

73 33 4. POWER TO PREVENT REGISTRATION. The administrator may
73 34 prevent the effectiveness of a transfer of an agent or
73 35 investment adviser representative under subsection 2,
74 1 paragraph "a" or "b", based on the public interest and the
74 2 protection of investors.

74 3 5. TERMINATION OF REGISTRATION OR APPLICATION FOR
74 4 REGISTRATION. If the administrator determines that a
74 5 registrant or applicant for registration is no longer in
74 6 existence or has ceased to act as a broker-dealer, agent,
74 7 investment adviser, or investment adviser representative, or
74 8 is the subject of an adjudication of incapacity or is subject
74 9 to the control of a committee, conservator, or guardian, or
74 10 cannot reasonably be located, a rule adopted or order issued
74 11 under this chapter may require that the registration be
74 12 canceled or terminated or the application denied. The
74 13 administrator may reinstate a canceled or terminated

74 14 registration, with or without hearing, and may make the
74 15 registration retroactive.

74 16 Sec. 34. NEW SECTION. 502.409 WITHDRAWAL OF REGISTRATION
74 17 OF BROKER=DEALER, AGENT, INVESTMENT ADVISER, AND INVESTMENT
74 18 ADVISER REPRESENTATIVE.

74 19 1. WITHDRAWAL OF REGISTRATION. Withdrawal of registration
74 20 by a broker=dealer, agent, investment adviser, or investment
74 21 adviser representative becomes effective sixty days after the
74 22 filing of the application to withdraw or within any shorter
74 23 period as provided by rule adopted or order issued under this
74 24 chapter unless a revocation or suspension proceeding is
74 25 pending when the application is filed. If a proceeding is
74 26 pending, withdrawal becomes effective when and upon such
74 27 conditions as required by rule adopted or order issued under
74 28 this chapter. The administrator may institute a revocation or
74 29 suspension proceeding under section 502.412 within one year
74 30 after the withdrawal became effective automatically and issue
74 31 a revocation or suspension order as of the last date on which
74 32 registration was effective if a proceeding is not pending.

74 33 1A. CEASING TO DO BUSINESS AND ABANDONED FILINGS. If the
74 34 administrator finds that any registrant or applicant for
74 35 registration is no longer in existence or has ceased to do
75 1 business as a broker=dealer, agent, investment adviser, or
75 2 investment adviser representative, or is subject to an
75 3 adjudication of mental incompetence or to the control of a
75 4 committee, conservator, or guardian, or cannot be located
75 5 after search, the administrator may by order revoke the
75 6 registration or application. If the administrator finds that
75 7 the applicant for registration or registrant has abandoned the
75 8 application or registration, the administrator may enter an
75 9 order of abandonment, and limit or eliminate further
75 10 consideration of the application or registration, as provided
75 11 by the administrator. The administrator may enter an order
75 12 under this subsection if notice is sent to the applicant or
75 13 registrant, and either the administrator does not receive a
75 14 response by the applicant or registrant within forty=five days
75 15 from the date that the notice was delivered, or action is not
75 16 taken by the applicant or registrant within the time specified
75 17 by the administrator in the notice, whichever is later.

75 18 Sec. 35. NEW SECTION. 502.410 FILING FEES.

75 19 1. BROKER=DEALERS. A person shall pay a fee of two
75 20 hundred dollars when initially filing an application for
75 21 registration as a broker=dealer and a fee of two hundred
75 22 dollars when filing a renewal of registration as a broker=
75 23 dealer. If the filing results in a denial or withdrawal, the
75 24 administrator shall retain the fee.

75 25 2. AGENTS. The fee for an individual is thirty dollars
75 26 when filing an application for registration as an agent, a fee
75 27 of thirty dollars when filing a renewal of registration as an
75 28 agent, and a fee of thirty dollars when filing for a change of
75 29 registration as an agent. If the filing results in a denial
75 30 or withdrawal, the administrator shall retain the fee.

75 31 3. INVESTMENT ADVISERS. A person shall pay a fee of one
75 32 hundred dollars when filing an application for registration as
75 33 an investment adviser and a fee of one hundred dollars when
75 34 filing a renewal of registration as an investment adviser. If
75 35 the filing results in a denial or withdrawal, the
76 1 administrator shall retain the fee.

76 2 4. INVESTMENT ADVISER REPRESENTATIVES. The fee for an
76 3 individual is thirty dollars when filing an application for
76 4 registration as an investment adviser representative, a fee of
76 5 thirty dollars when filing a renewal of registration as an
76 6 investment adviser representative, and a fee of thirty dollars
76 7 when filing a change of registration as an investment adviser
76 8 representative. If the filing results in a denial or
76 9 withdrawal, the administrator shall retain the fee.

76 10 However, an investment adviser representative is not
76 11 required to pay a filing fee if the investment adviser is a
76 12 sole proprietorship or the substantial equivalent and the
76 13 investment adviser representative is the same individual as
76 14 the investment adviser.

76 15 5. FEDERAL COVERED INVESTMENT ADVISERS. A federal covered
76 16 investment adviser required to file a notice under section
76 17 502.405 shall pay an initial fee of one hundred dollars and an
76 18 annual notice fee of one hundred dollars.

76 19 6. PAYMENT. A person required to pay a filing or notice
76 20 fee under this section may transmit the fee through or to a
76 21 designee as a rule or order provides under this chapter.

76 22 Sec. 36. NEW SECTION. 502.411 POST=REGISTRATION
76 23 REQUIREMENTS.

76 24 1. FINANCIAL REQUIREMENTS. Subject to section 15(h) of

76 25 the Securities Exchange Act of 1934, 15 U.S.C. } 78o(h), or
76 26 section 222 of the Investment Advisers Act of 1940, 15 U.S.C.
76 27 } 80b=22, a rule adopted or order issued under this chapter
76 28 may establish minimum financial requirements for broker=
76 29 dealers registered or required to be registered under this
76 30 chapter and investment advisers registered or required to be
76 31 registered under this chapter.

76 32 2. FINANCIAL REPORTS. Subject to section 15(h) of the
76 33 Securities Exchange Act of 1934, 15 U.S.C. } 78o(h), or
76 34 section 222(b) of the Investment Advisers Act of 1940, 15
76 35 U.S.C. } 80b=22, a broker-dealer registered or required to be
77 1 registered under this chapter and an investment adviser
77 2 registered or required to be registered under this chapter
77 3 shall file such financial reports as are required by a rule
77 4 adopted or order issued under this chapter. If the
77 5 information contained in a record filed under this subsection
77 6 is or becomes inaccurate or incomplete in a material respect,
77 7 the registrant shall promptly file a correcting amendment.
77 8 The administrator may, by rule, assess a reasonable charge for
77 9 the late filing of a financial report under this subsection.

77 10 3. RECORDKEEPING. Subject to section 15(h) of the
77 11 Securities Exchange Act of 1934, 15 U.S.C. } 78o(h), or
77 12 section 222 of the Investment Advisers Act of 1940, 15 U.S.C.
77 13 } 80b=22, all of the following apply:

77 14 a. A broker-dealer registered or required to be registered
77 15 under this chapter and an investment adviser registered or
77 16 required to be registered under this chapter shall make and
77 17 maintain the accounts, correspondence, memoranda, papers,
77 18 books, and other records required by rule adopted or order
77 19 issued under this chapter.

77 20 b. Broker-dealer records required to be maintained under
77 21 paragraph "a" may be maintained in any form of data storage
77 22 acceptable under section 17(a) of the Securities Exchange Act
77 23 of 1934, 15 U.S.C. } 78q(a), if they are readily accessible to
77 24 the administrator.

77 25 c. Investment adviser records required to be maintained
77 26 under paragraph "a" may be maintained in any form of data
77 27 storage required by rule adopted or order issued under this
77 28 chapter.

77 29 4. AUDITS OR INSPECTIONS. The records of a broker-dealer
77 30 registered or required to be registered under this chapter and
77 31 of an investment adviser registered or required to be
77 32 registered under this chapter are subject to such reasonable
77 33 periodic, special, or other audits or inspections by a
77 34 representative of the administrator, within or without this
77 35 state, as the administrator considers necessary or appropriate
78 1 in the public interest and for the protection of investors.
78 2 An audit or inspection may be made at any time and without
78 3 prior notice. The administrator may copy, and remove for
78 4 audit or inspection copies of, all records the administrator
78 5 reasonably considers necessary or appropriate to conduct the
78 6 audit or inspection. The administrator may assess a
78 7 reasonable charge for conducting an audit or inspection under
78 8 this subsection.

78 9 5. CUSTODY AND DISCRETIONARY AUTHORITY BOND OR INSURANCE.
78 10 Subject to section 15(h) of the Securities Exchange Act of
78 11 1934, 15 U.S.C. } 78o(h), or section 222 of the Investment
78 12 Advisers Act of 1940, 15 U.S.C. } 80b=22, a rule adopted or
78 13 order issued under this chapter may require a broker-dealer or
78 14 investment adviser that has custody of or discretionary
78 15 authority over funds or securities of a customer or client to
78 16 obtain insurance or post a bond or other satisfactory form of
78 17 security in an amount the administrator shall prescribe. The
78 18 administrator may determine the requirements of the insurance,
78 19 bond, or other satisfactory form of security. Insurance or a
78 20 bond or other satisfactory form of security shall not be
78 21 required of a broker-dealer registered under this chapter
78 22 whose net capital exceeds, or of an investment adviser
78 23 registered under this chapter whose minimum financial
78 24 requirements exceed, the amounts required by rule or order
78 25 under this chapter. The insurance, bond, or other
78 26 satisfactory form of security must permit an action by a
78 27 person to enforce any liability on the insurance, bond, or
78 28 other satisfactory form of security if instituted within the
78 29 time limitations in section 502.509, subsection 10, paragraph
78 30 "b".

78 31 6. REQUIREMENTS FOR CUSTODY. Subject to section 15(h) of
78 32 the Securities Exchange Act of 1934, 15 U.S.C. } 78o(h), or
78 33 section 222 of the Investment Advisers Act of 1940, 15 U.S.C.
78 34 } 80b=22, an agent shall not have custody of funds or
78 35 securities of a customer except under the supervision of a

79 1 broker-dealer and an investment adviser representative shall
79 2 not have custody of funds or securities of a client except
79 3 under the supervision of an investment adviser or a federal
79 4 covered investment adviser. A rule adopted or order issued
79 5 under this chapter may prohibit, limit, or impose conditions
79 6 on a broker-dealer regarding custody of funds or securities of
79 7 a customer and on an investment adviser regarding custody of
79 8 securities or funds of a client.

79 9 7. INVESTMENT ADVISER BROCHURE RULE. With respect to an
79 10 investment adviser registered or required to be registered
79 11 under this chapter, a rule adopted or order issued under this
79 12 chapter may require that information or other records be
79 13 furnished or disseminated to clients or prospective clients in
79 14 this state as necessary or appropriate in the public interest
79 15 and for the protection of investors and advisory clients.

79 16 8. CONTINUING EDUCATION. A rule adopted or order issued
79 17 under this chapter may require an individual registered under
79 18 section 502.402 or 502.404 to participate in a continuing
79 19 education program approved by the securities and exchange
79 20 commission and administered by a self-regulatory organization
79 21 or, in the absence of such a program, a rule adopted or order
79 22 issued under this chapter may require continuing education for
79 23 an individual registered under section 502.404.

79 24 Sec. 37. NEW SECTION. 502.412 DENIAL, REVOCATION,
79 25 SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION, OR LIMITATION
79 26 OF REGISTRATION.

79 27 1. DISCIPLINARY CONDITIONS == APPLICANTS. If the
79 28 administrator finds that the order is in the public interest
79 29 and subsection 4 authorizes the action, an order issued under
79 30 this chapter may deny an application, or may condition or
79 31 limit registration of an applicant to be a broker-dealer,
79 32 agent, investment adviser, or investment adviser
79 33 representative, and, if the applicant is a broker-dealer or
79 34 investment adviser, of a partner, officer, director, or person
79 35 having a similar status or performing similar functions, or a
80 1 person directly or indirectly in control, of the broker-dealer
80 2 or investment adviser.

80 3 2. DISCIPLINARY CONDITIONS == REGISTRANTS. If the
80 4 administrator finds that the order is in the public interest
80 5 and subsection 4 authorizes the action, an order issued under
80 6 this chapter may revoke, suspend, condition, or limit the
80 7 registration of a registrant and, if the registrant is a
80 8 broker-dealer or investment adviser, of a partner, officer,
80 9 director, or person having a similar status or performing
80 10 similar functions, or a person directly or indirectly in
80 11 control, of the broker-dealer or investment adviser. However,
80 12 the administrator shall not do any of the following:

80 13 a. Institute a revocation or suspension proceeding under
80 14 this subsection based on an order issued under a law of
80 15 another state that is reported to the administrator or a
80 16 designee of the administrator more than one year after the
80 17 date of the order on which it is based.

80 18 b. Under subsection 4, paragraph "e", subparagraph (1) or
80 19 (2), issue an order on the basis of an order issued under the
80 20 securities act of another state unless the other order was
80 21 based on conduct for which subsection 4 would authorize the
80 22 action had the conduct occurred in this state.

80 23 3. DISCIPLINARY PENALTIES == REGISTRANTS. If the
80 24 administrator finds that the order is in the public interest
80 25 and subsection 4, paragraphs "a" through "f", "h", "i", "j",
80 26 or "l", and "m", authorizes the action, an order under this
80 27 chapter may censure, impose a bar, or impose a civil penalty
80 28 in an amount not to exceed a maximum of five thousand dollars
80 29 for a single violation or five hundred thousand dollars for
80 30 more than one violation, on a registrant, and, if the
80 31 registrant is a broker-dealer or investment adviser, a
80 32 partner, officer, director, or person having a similar status
80 33 or performing similar functions, or a person directly or
80 34 indirectly in control, of the broker-dealer or investment
80 35 adviser.

81 1 4. GROUNDS FOR DISCIPLINE. A person may be disciplined
81 2 under subsections 1 through 3 if any of the following applies:

81 3 a. The person has filed an application for registration in
81 4 this state under this chapter or the predecessor chapter
81 5 within the previous ten years, which, as of the effective date
81 6 of registration or as of any date after filing in the case of
81 7 an order denying effectiveness, was incomplete in any material
81 8 respect or contained a statement that, in light of the
81 9 circumstances under which it was made, was false or misleading
81 10 with respect to a material fact.

81 11 b. The person willfully violated or willfully failed to

81 12 comply with this chapter or the predecessor chapter or a rule
81 13 adopted or order issued under this chapter or the predecessor
81 14 chapter within the previous ten years.

81 15 c. The person has been convicted of a felony or within the
81 16 previous ten years has been convicted of a misdemeanor
81 17 involving a security, a commodity future or option contract,
81 18 or an aspect of a business involving securities, commodities,
81 19 investments, franchises, insurance, banking, or finance.

81 20 d. The person is enjoined or restrained by a court of
81 21 competent jurisdiction in an action instituted by the
81 22 administrator under this chapter or the predecessor chapter, a
81 23 state, the securities and exchange commission, or the United
81 24 States from engaging in or continuing an act, practice, or
81 25 course of business involving an aspect of a business involving
81 26 securities, commodities, investments, franchises, insurance,
81 27 banking, or finance.

81 28 e. The person is the subject of an order, issued after
81 29 notice and opportunity for hearing, by any of the following:

81 30 (1) The securities or other financial services regulator
81 31 of a state or the securities and exchange commission or other
81 32 federal agency denying, revoking, barring, or suspending
81 33 registration as a broker-dealer, agent, investment adviser,
81 34 federal covered investment adviser, or investment adviser
81 35 representative.

82 1 (2) The securities regulator of a state or the securities
82 2 and exchange commission against a broker-dealer, agent,
82 3 investment adviser, investment adviser representative, or
82 4 federal covered investment adviser.

82 5 (3) The securities and exchange commission or a self=
82 6 regulatory organization suspending or expelling the registrant
82 7 from membership in the self-regulatory organization.

82 8 (4) A court adjudicating a United States postal service
82 9 fraud order.

82 10 (5) The insurance regulator of a state denying,
82 11 suspending, or revoking registration as an insurance agent or
82 12 insurance producer.

82 13 (6) A depository institution regulator or financial
82 14 services regulator suspending or barring the person from the
82 15 depository institution or other financial services business.

82 16 f. The person is the subject of an adjudication or
82 17 determination, after notice and opportunity for hearing, by
82 18 the securities and exchange commission, the commodity futures
82 19 trading commission, the federal trade commission, a federal
82 20 depository institution regulator, or a depository institution,
82 21 insurance, or other financial services regulator of a state
82 22 that the person willfully violated the Securities Act of 1933,
82 23 the Securities Exchange Act of 1934, the Investment Advisers
82 24 Act of 1940, the Investment Company Act of 1940, or the
82 25 Commodity Exchange Act, the securities or commodities law of a
82 26 state, or a federal or state law under which a business
82 27 involving investments, franchises, insurance, banking, or
82 28 finance is regulated.

82 29 g. The person is insolvent, either because the person's
82 30 liabilities exceed the person's assets or because the person
82 31 cannot meet the person's obligations as they mature, but the
82 32 administrator shall not enter an order against an applicant or
82 33 registrant under this paragraph without a finding of
82 34 insolvency as to the applicant or registrant.

82 35 h. The person refuses to allow or otherwise impedes the
83 1 administrator from conducting an audit or inspection under
83 2 section 502.411, subsection 4, or refuses access to a
83 3 registrant's office to conduct an audit or inspection under
83 4 section 502.411, subsection 4.

83 5 i. The person has failed to reasonably supervise an agent,
83 6 investment adviser representative, or other individual, if the
83 7 agent, investment adviser representative, or other individual
83 8 was subject to the person's supervision and committed a
83 9 violation of this chapter or the predecessor chapter or a rule
83 10 adopted or order issued under this chapter or the predecessor
83 11 chapter within the previous ten years.

83 12 j. The person has not paid the proper filing fee within
83 13 thirty days after having been notified by the administrator of
83 14 a deficiency, but the administrator shall vacate an order
83 15 under this paragraph when the deficiency is corrected.

83 16 k. The person after notice and opportunity for a hearing
83 17 has been found within the previous ten years to have done any
83 18 of the following:

83 19 (1) By a court of competent jurisdiction to have willfully
83 20 violated the laws of a foreign jurisdiction under which the
83 21 business of securities, commodities, investment, franchises,
83 22 insurance, banking, or finance is regulated.

83 23 (2) To have been the subject of an order of a securities
83 24 regulator of a foreign jurisdiction denying, revoking, or
83 25 suspending the right to engage in the business of securities
83 26 as a broker-dealer, agent, investment adviser, investment
83 27 adviser representative, or similar person.

83 28 (3) To have been suspended or expelled from membership by
83 29 or participation in a securities exchange or securities
83 30 association operating under the securities laws of a foreign
83 31 jurisdiction.

83 32 1. The person is the subject of a cease and desist order
83 33 issued by the securities and exchange commission or issued
83 34 under the securities, commodities, investment, franchise,
83 35 banking, finance, or insurance laws of a state.

84 1 m. The person has engaged in dishonest or unethical
84 2 practices in the securities, commodities, investment,
84 3 franchise, banking, finance, or insurance business within the
84 4 previous ten years.

84 5 n. The person is not qualified on the basis of factors
84 6 such as training, experience, and knowledge of the securities
84 7 business. However, in the case of an application by an agent
84 8 for a broker-dealer that is a member of a self-regulatory
84 9 organization or by an individual for registration as an
84 10 investment adviser representative, a denial order shall not be
84 11 based on this paragraph if the individual has successfully
84 12 completed all examinations required by subsection 5. The
84 13 administrator may require an applicant for registration under
84 14 section 502.402 or 502.404 who has not been registered in a
84 15 state within the two years preceding the filing of an
84 16 application in this state to successfully complete an
84 17 examination.

84 18 5. EXAMINATIONS. A rule adopted or order issued under
84 19 this chapter may require that an examination, including an
84 20 examination developed or approved by an organization of
84 21 securities regulators, be successfully completed by a class of
84 22 individuals or all individuals. An order issued under this
84 23 chapter may waive, in whole or in part, an examination as to
84 24 an individual and a rule adopted under this chapter may waive,
84 25 in whole or in part, an examination as to a class of
84 26 individuals if the administrator determines that the
84 27 examination is not necessary or appropriate in the public
84 28 interest and for the protection of investors.

84 29 6. SUMMARY PROCESS. The administrator may suspend or deny
84 30 an application summarily; restrict, condition, limit, or
84 31 suspend a registration; or censure, bar, or impose a civil
84 32 penalty on a registrant before final determination of an
84 33 administrative proceeding. Upon the issuance of an order, the
84 34 administrator shall promptly notify each person subject to the
84 35 order that the order has been issued, the reasons for the
85 1 action, and that within fifteen days after the receipt of a
85 2 request in a record from the person the matter will be
85 3 scheduled for a hearing. If a hearing is not requested and
85 4 none is ordered by the administrator within thirty days after
85 5 the date of service of the order, the order becomes final by
85 6 operation of law. If a hearing is requested or ordered, the
85 7 administrator, after notice of and opportunity for hearing to
85 8 each person subject to the order, may modify or vacate the
85 9 order or extend the order until final determination. Section
85 10 17A.18A is inapplicable to a summary order issued under this
85 11 subsection.

85 12 7. PROCEDURAL REQUIREMENTS. An order issued shall not be
85 13 issued under this section, except under subsection 6, without
85 14 all of the following:

- 85 15 a. Appropriate notice to the applicant or registrant.
- 85 16 b. Opportunity for hearing.
- 85 17 c. Findings of fact and conclusions of law in a record in
85 18 accordance with chapter 17A.

85 19 8. CONTROL PERSON LIABILITY. A person that controls,
85 20 directly or indirectly, a person not in compliance with this
85 21 section may be disciplined by order of the administrator under
85 22 subsections 1 through 3 to the same extent as the noncomplying
85 23 person, unless the controlling person did not know, and in the
85 24 exercise of reasonable care could not have known, of the
85 25 existence of conduct that is a ground for discipline under
85 26 this section.

85 27 9. LIMIT ON INVESTIGATION OR PROCEEDING. The
85 28 administrator shall not institute a proceeding under
85 29 subsection 1, 2, or 3 based solely on material facts actually
85 30 known by the administrator unless an investigation or the
85 31 proceeding is instituted within one year after the
85 32 administrator actually acquires knowledge of the material
85 33 facts.

85 34
85 35
86 1
86 2
86 3
86 4
86 5
86 6
86 7
86 8
86 9
86 10
86 11
86 12
86 13
86 14
86 15
86 16
86 17
86 18
86 19
86 20
86 21
86 22
86 23
86 24
86 25
86 26
86 27
86 28
86 29
86 30
86 31
86 32
86 33
86 34
87 1
87 2
87 3
87 4
87 5
87 6
87 7
87 8
87 9
87 10
87 11
87 12
87 13
87 14
87 15
87 16
87 17
87 18
87 19
87 20
87 21
87 22
87 23
87 24
87 25
87 26
87 27
87 28
87 29
87 30
87 31
87 32
87 33
87 34
87 35
88 1
88 2
88 3
88 4
88 5
88 6
88 7
88 8
88 9

ARTICLE 5
FRAUD AND LIABILITIES

Sec. 38. Section 502.501, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.501 GENERAL FRAUD.

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

1. To employ a device, scheme, or artifice to defraud;
2. To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
3. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

Sec. 39. NEW SECTION. 502.501A PROHIBITED TRANSACTIONS OF BROKER-DEALERS AND AGENTS.

A broker-dealer or agent shall not effect a transaction in, or induce or attempt to induce the purchase or sale of, any security in this state by means of any manipulative, deceptive, or other fraudulent scheme, device, or contrivance, fictitious quotation, or in violation of this chapter or any rule adopted or order issued under this chapter. A broker-dealer or agent shall not recommend to a customer the purchase, sale, or exchange of a security without reasonable grounds to believe that the transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and other relevant information known by the broker-dealer.

Sec. 40. Section 502.502, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.502 PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE.

1. FRAUD IN PROVIDING INVESTMENT ADVICE. It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities to do any of the following:

- a. Employ a device, scheme, or artifice to defraud another person.
- b. Engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

2. RULES DEFINING FRAUD. A rule adopted under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

3. RULES SPECIFYING CONTENTS OF ADVISORY CONTRACT. A rule adopted under this chapter may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

Sec. 41. Section 502.503, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.503 EVIDENTIARY BURDEN.

1. CIVIL. In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

2. CRIMINAL. In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

Sec. 42. Section 502.504, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

502.504 FILING OF SALES AND ADVERTISING LITERATURE.

1. FILING REQUIREMENT. Except as otherwise provided in subsection 2, a rule adopted or order issued under this chapter may require the filing of a prospectus, pamphlet,

88 10 circular, form letter, advertisement, sales literature, or
88 11 other advertising record relating to a security or investment
88 12 advice, addressed or intended for distribution to prospective
88 13 investors, including clients or prospective clients of a
88 14 person registered or required to be registered as an
88 15 investment adviser under this chapter.

88 16 2. EXCLUDED COMMUNICATIONS. This section does not apply
88 17 to sales and advertising literature specified in subsection 1
88 18 which relates to a federal covered security, a federal covered
88 19 investment adviser, or a security or transaction exempted by
88 20 section 502.201, 502.202, or 502.203 except as required
88 21 pursuant to section 502.201, subsection 7.

88 22 2A. AUTHORITY TO PROHIBIT FALSE ADVERTISING. The
88 23 administrator may by rule or order prohibit the publication,
88 24 circulation, or use of any advertising deemed false or
88 25 misleading.

88 26 Sec. 43. Section 502.505, Code 2003, is amended by
88 27 striking the section and inserting in lieu thereof the
88 28 following:

88 29 502.505 MISLEADING FILINGS.

88 30 It is unlawful for a person to make or cause to be made, in
88 31 a record that is used in an action or proceeding or filed
88 32 under this chapter, a statement that, at the time and in the
88 33 light of the circumstances under which it is made, is false or
88 34 misleading in a material respect, or, in connection with the
88 35 statement, to omit to state a material fact necessary to make
89 1 the statement made, in the light of the circumstances under
89 2 which it was made, not false or misleading.

89 3 Sec. 44. Section 502.506, Code 2003, is amended by
89 4 striking the section and inserting in lieu thereof the
89 5 following:

89 6 502.506 MISREPRESENTATIONS CONCERNING REGISTRATION OR
89 7 EXEMPTION.

89 8 1. CERTAIN REPRESENTATIONS NOT ALLOWED. The filing of an
89 9 application for registration, a registration statement, a
89 10 notice filing under this chapter, the registration of a
89 11 person, the notice filing by a person, or the registration of
89 12 a security under this chapter does not constitute a finding by
89 13 the administrator that a record filed under this chapter is
89 14 true, complete, and not misleading. The filing or
89 15 registration or the availability of an exemption, exception,
89 16 preemption, or exclusion for a security or a transaction does
89 17 not mean that the administrator has passed upon the merits or
89 18 qualifications of, or recommended or given approval to, a
89 19 person, security, or transaction. It is unlawful to make, or
89 20 cause to be made, to a purchaser, customer, client, or
89 21 prospective customer or client a representation inconsistent
89 22 with this section.

89 23 1A. OFFICIAL ENDORSEMENT PROHIBITED. A state official or
89 24 employee of the state shall not use such person's name in an
89 25 official capacity in connection with the endorsement or
89 26 recommendation of the organization or the promotion of any
89 27 issuer or in the sale to the public of its securities, and no
89 28 one shall use the stationery of the state or of any official
89 29 thereof in connection with any such transaction.

89 30 Sec. 45. NEW SECTION. 502.506A MISSTATEMENTS IN
89 31 PUBLICITY PROHIBITED.

89 32 It is unlawful for any person to make or cause to be made,
89 33 in any public report or press release, or in other information
89 34 which is either made generally available to the public or used
89 35 in opposition to a tender offer, any statement of a material
90 1 fact relating to a target company or made in connection with a
90 2 takeover offer which is, at the time and in the light of the
90 3 circumstances under which it is made, false or misleading, if
90 4 it is reasonably foreseeable that such statement will induce
90 5 other persons to buy, sell, or hold securities of the target
90 6 company.

90 7 Sec. 46. Section 502.507, Code 2003, is amended by
90 8 striking the section and inserting in lieu thereof the
90 9 following:

90 10 502.507 QUALIFIED IMMUNITY.

90 11 A broker-dealer, agent, investment adviser, federal covered
90 12 investment adviser, or investment adviser representative is
90 13 not liable to another broker-dealer, agent, investment
90 14 adviser, federal covered investment adviser, or investment
90 15 adviser representative for defamation relating to a statement
90 16 that is contained in a record required by the administrator,
90 17 or designee of the administrator, the securities and exchange
90 18 commission, or a self-regulatory organization, unless the
90 19 person knew, or should have known at the time that the
90 20 statement was made, that it was false in a material respect or

90 21 the person acted in reckless disregard of the statement's
90 22 truth or falsity.

90 23 Sec. 47. NEW SECTION. 502.508 CRIMINAL PENALTIES.

90 24 1. CRIMINAL PENALTIES.

90 25 a. Except as provided in paragraph "b", a person who
90 26 willfully violates any provision of this chapter, or any rule
90 27 adopted or order issued under this chapter, is guilty of a
90 28 class "D" felony.

90 29 b. A person who willfully violates section 502.501 or
90 30 section 502.502, subsection 1, resulting in a loss of more
90 31 than ten thousand dollars is guilty of a class "C" felony.

90 32 2. CRIMINAL REFERENCE NOT REQUIRED. The attorney general
90 33 or the proper county, with or without a reference from the
90 34 administrator, may institute criminal proceedings under this
90 35 chapter.

91 1 3. NO LIMITATION ON OTHER CRIMINAL ENFORCEMENT. This
91 2 chapter does not limit the power of this state to punish a
91 3 person for conduct that constitutes a crime under other laws
91 4 of this state.

91 5 Sec. 48. NEW SECTION. 502.509 CIVIL LIABILITY.

91 6 1. SECURITIES LITIGATION UNIFORM STANDARDS ACT.
91 7 Enforcement of civil liability under this section is subject
91 8 to the Securities Litigation Uniform Standards Act of 1998.

91 9 2. LIABILITY OF SELLER TO PURCHASER. A person is liable
91 10 to the purchaser if the person sells a security in violation
91 11 of section 502.301 or, by means of an untrue statement of a
91 12 material fact or an omission to state a material fact
91 13 necessary in order to make the statement made, in light of the
91 14 circumstances under which it is made, not misleading, the
91 15 purchaser not knowing the untruth or omission and the seller
91 16 not sustaining the burden of proof that the seller did not
91 17 know and, in the exercise of reasonable care, could not have
91 18 known of the untruth or omission. An action under this
91 19 subsection is governed by the following:

91 20 a. The purchaser may maintain an action to recover the
91 21 consideration paid for the security, less the amount of any
91 22 income received on the security, and interest at the legal
91 23 rate from the date of the purchase, costs, and reasonable
91 24 attorney fees determined by the court, upon the tender of the
91 25 security, or for actual damages as provided in paragraph "c".

91 26 b. The tender referred to in paragraph "a" may be made any
91 27 time before entry of judgment. Tender requires only notice in
91 28 a record of ownership of the security and willingness to
91 29 exchange the security for the amount specified. A purchaser
91 30 that no longer owns the security may recover actual damages as
91 31 provided in paragraph "c".

91 32 c. Actual damages in an action arising under this
91 33 subsection are the amount that would be recoverable upon a
91 34 tender less the value of the security when the purchaser
91 35 disposed of it, and interest at the legal rate from the date
92 1 of the purchase, costs, and reasonable attorney fees
92 2 determined by the court.

92 3 3. LIABILITY OF PURCHASER TO SELLER. A person is liable
92 4 to the seller if the person buys a security by means of an
92 5 untrue statement of a material fact or omission to state a
92 6 material fact necessary in order to make the statement made,
92 7 in light of the circumstances under which it is made, not
92 8 misleading, the seller not knowing of the untruth or omission,
92 9 and the purchaser not sustaining the burden of proof that the
92 10 purchaser did not know, and in the exercise of reasonable
92 11 care, could not have known of the untruth or omission. An
92 12 action under this subsection is governed by all of the
92 13 following:

92 14 a. The seller may maintain an action to recover the
92 15 security, and any income received on the security, costs, and
92 16 reasonable attorney fees determined by the court, upon the
92 17 tender of the purchase price, or for actual damages as
92 18 provided in paragraph "c".

92 19 b. The tender referred to in paragraph "a" may be made any
92 20 time before entry of judgment. Tender requires only notice in
92 21 a record of the present ability to pay the amount tendered and
92 22 willingness to take delivery of the security for the amount
92 23 specified. If the purchaser no longer owns the security, the
92 24 seller may recover actual damages as provided in paragraph
92 25 "c".

92 26 c. Actual damages in an action arising under this
92 27 subsection are the difference between the price at which the
92 28 security was sold and the value the security would have had at
92 29 the time of the sale in the absence of the purchaser's conduct
92 30 causing liability, and interest at the legal rate from the
92 31 date of the sale of the security, costs, and reasonable

92 32 attorney fees determined by the court.

92 33 4. LIABILITY OF UNREGISTERED BROKER=DEALER AND AGENT. A
92 34 person acting as a broker=dealer or agent that sells or buys a
92 35 security in violation of section 502.401, subsection 1,
93 1 section 502.402, subsection 1, or section 502.506 is liable to
93 2 the customer. The customer, if a purchaser, may maintain an
93 3 action for recovery of actual damages as specified in
93 4 subsection 2, paragraphs "a" through "c", or, if a seller, for
93 5 a remedy as specified in subsection 3, paragraphs "a" through
93 6 "c".

93 7 5. LIABILITY OF UNREGISTERED INVESTMENT ADVISER AND
93 8 INVESTMENT ADVISER REPRESENTATIVE. A person acting as an
93 9 investment adviser or investment adviser representative that
93 10 provides investment advice for compensation in violation of
93 11 section 502.403, subsection 1, section 502.404, subsection 1,
93 12 or section 502.506 is liable to the client. The client may
93 13 maintain an action to recover the consideration paid for the
93 14 advice, interest at the legal rate from the date of payment,
93 15 costs, and reasonable attorney fees determined by the court
93 16 and taxed as court costs.

93 17 6. LIABILITY FOR INVESTMENT ADVICE. A person that
93 18 receives directly or indirectly any consideration for
93 19 providing investment advice to another person and that employs
93 20 a device, scheme, or artifice to defraud the other person or
93 21 engages in an act, practice, or course of business that
93 22 operates or would operate as a fraud or deceit on the other
93 23 person is liable to the other person. An action under this
93 24 subsection is governed by all of the following:

93 25 a. The person defrauded may maintain an action to recover
93 26 the consideration paid for the advice and the amount of any
93 27 actual damages caused by the fraudulent conduct, interest at
93 28 the legal rate from the date of the fraudulent conduct, costs,
93 29 and reasonable attorney fees determined by the court, less the
93 30 amount of any income received as a result of the fraudulent
93 31 conduct.

93 32 b. This subsection does not apply to a broker=dealer or
93 33 its agents if the investment advice provided is solely
93 34 incidental to transacting business as a broker=dealer and no
93 35 special compensation is received for the investment advice.

94 1 7. JOINT AND SEVERAL LIABILITY. The following persons are
94 2 liable jointly and severally with and to the same extent as
94 3 persons liable under subsections 2 through 6:

94 4 a. A person that directly or indirectly controls a person
94 5 liable under subsections 2 through 6, unless the controlling
94 6 person sustains the burden of proof that the person did not
94 7 know, and in the exercise of reasonable care could not have
94 8 known, of the existence of conduct by reason of which the
94 9 liability is alleged to exist.

94 10 b. An individual who is a managing partner, executive
94 11 officer, or director of a person liable under subsections 2
94 12 through 6, including an individual having a similar status or
94 13 performing similar functions, unless the individual sustains
94 14 the burden of proof that the individual did not know and, in
94 15 the exercise of reasonable care could not have known, of the
94 16 existence of conduct by reason of which the liability is
94 17 alleged to exist.

94 18 c. An individual who is an employee of or associated with
94 19 a person liable under subsections 2 through 6 or a person,
94 20 whether an employee of such person or otherwise, who
94 21 materially aids in the act or transaction constituting the
94 22 violation, and who materially aids the conduct giving rise to
94 23 the liability, unless the individual sustains the burden of
94 24 proof that the individual did not know and, in the exercise of
94 25 reasonable care could not have known, of the existence of
94 26 conduct by reason of which the liability is alleged to exist.

94 27 d. A person that is a broker=dealer, agent, investment
94 28 adviser, or investment adviser representative that materially
94 29 aids the conduct giving rise to the liability under
94 30 subsections 2 through 6, unless the person sustains the burden
94 31 of proof that the person did not know and, in the exercise of
94 32 reasonable care could not have known, of the existence of
94 33 conduct by reason of which liability is alleged to exist.

94 34 8. RIGHT OF CONTRIBUTION. A person liable under this
94 35 section has a right of contribution as in cases of contract
95 1 against any other person liable under this section for the
95 2 same conduct.

95 3 9. SURVIVAL OF CAUSE OF ACTION. A cause of action under
95 4 this section survives the death of an individual who might
95 5 have been a plaintiff or defendant.

95 6 10. STATUTE OF LIMITATIONS. A person shall not obtain
95 7 relief under any of the following:

95 8 a. Under subsection 2 for violation of section 502.301, or
95 9 under subsection 4 or 5, unless the action is instituted
95 10 within one year after the violation occurred.

95 11 b. Under subsection 2, other than for violation of section
95 12 502.301, or under subsection 3 or 6, unless the action is
95 13 instituted within the earlier of two years after discovery of
95 14 the facts constituting the violation or five years after the
95 15 violation.

95 16 11. NO ENFORCEMENT OF VIOLATIVE CONTRACT. A person that
95 17 has made, or has engaged in the performance of, a contract in
95 18 violation of this chapter or a rule adopted or order issued
95 19 under this chapter, or that has acquired a purported right
95 20 under the contract with knowledge of conduct by reason of
95 21 which its making or performance was in violation of this
95 22 chapter, shall not base an action on the contract.

95 23 12. NO CONTRACTUAL WAIVER. A condition, stipulation, or
95 24 provision binding a person purchasing or selling a security or
95 25 receiving investment advice to waive compliance with this
95 26 chapter or a rule adopted or order issued under this chapter
95 27 is void.

95 28 13. SURVIVAL OF OTHER RIGHTS OR REMEDIES. The rights and
95 29 remedies provided by this chapter are in addition to any other
95 30 rights or remedies that may exist, but this chapter does not
95 31 create a cause of action not specified in this section or
95 32 section 502.411, subsection 5.

95 33 13A. INFORMATIONAL FILING WITH THE ADMINISTRATOR. A copy
95 34 of any suit or arbitration action filed under this section
95 35 shall be served upon the administrator within twenty days of
96 1 the filing in the form and manner prescribed by the
96 2 administrator by rule or order, provided that all of the
96 3 following apply:

96 4 a. The failure to comply with this provision shall not
96 5 invalidate the action which is the subject of the suit.

96 6 b. The suit or arbitration action has not been filed in a
96 7 record with the central registration depository or the
96 8 investment adviser registration depository.

96 9 13B. LIABILITY FOR TAKEOVER VIOLATIONS. Any person who
96 10 violates section 502.321B shall be liable to the person
96 11 selling the security to such violator, which seller may sue
96 12 either at law or in equity to recover the security, costs, and
96 13 reasonable attorney fees, plus any income or distributions, in
96 14 cash or in kind, received by the purchaser thereon, upon
96 15 tender of the consideration received, or for damages if the
96 16 purchaser no longer owns the security. Damages shall be the
96 17 excess of the value of the security when the purchaser
96 18 disposed of it, plus interest at the legal rate from the date
96 19 of disposition, over the consideration paid for the security.
96 20 Tender requires only notice of willingness to pay the amount
96 21 specified in exchange for the security. Any notice may be
96 22 given by service as in civil actions or by certified mail to
96 23 the last known address of the person liable.

96 24 In addition to other remedies provided in this chapter, in
96 25 a proceeding alleging a violation of article 3A, the court may
96 26 provide that all shares acquired from a resident of this state
96 27 in violation of any provision of this chapter or rule or order
96 28 issued pursuant to this chapter be denied voting rights for
96 29 one year after acquisition, that the shares be nontransferable
96 30 on the books of the target company, or that during this one=
96 31 year period the target company have the option to call the
96 32 shares for redemption either at the price at which the shares
96 33 were acquired or at book value per share as of the last day of
96 34 the fiscal quarter ended prior to the date of the call for
96 35 redemption, which redemption shall occur on the date set in
97 1 the call notice but not later than sixty days after the call
97 2 notice is given.

97 3 Sec. 49. NEW SECTION. 502.510 RECISION OFFERS.

97 4 A purchaser, seller, or recipient of investment advice may
97 5 not maintain an action under section 502.509 if all of the
97 6 following apply:

97 7 1. The purchaser, seller, or recipient of investment
97 8 advice receives in a record, before the action is instituted,
97 9 any of the following:

97 10 a. An offer stating the respect in which liability under
97 11 section 502.509 may have arisen and fairly advising the
97 12 purchaser, seller, or recipient of investment advice of that
97 13 person's rights in connection with the offer, and any
97 14 financial or other information necessary to correct all
97 15 material misrepresentations or omissions in the information
97 16 that was required by this chapter to be furnished to that
97 17 person at the time of the purchase, sale, or investment
97 18 advice.

97 19 b. If the basis for relief under this section may have
97 20 been a violation of section 502.509, subsection 2, an offer to
97 21 repurchase the security for cash, payable on delivery of the
97 22 security, equal to the consideration paid, and interest at the
97 23 legal rate from the date of the purchase, less the amount of
97 24 any income received on the security; or, if the purchaser no
97 25 longer owns the security, an offer to pay the purchaser upon
97 26 acceptance of the offer damages in an amount that would be
97 27 recoverable upon a tender, less the value of the security when
97 28 the purchaser disposed of it, and interest at the legal rate
97 29 from the date of the purchase in cash equal to the damages
97 30 computed in the manner provided in this subsection.

97 31 c. If the basis for relief under this section may have
97 32 been a violation of section 502.509, subsection 3, an offer to
97 33 tender the security, on payment by the seller of an amount
97 34 equal to the purchase price paid, less income received on the
97 35 security by the purchaser and interest at the legal rate from
98 1 the date of the sale; or if the purchaser no longer owns the
98 2 security, an offer to pay the seller upon acceptance of the
98 3 offer, in cash, damages in the amount of the difference
98 4 between the price at which the security was purchased and the
98 5 value the security would have had at the time of the purchase
98 6 in the absence of the purchaser's conduct that may have caused
98 7 liability and interest at the legal rate of interest from the
98 8 date of the sale.

98 9 d. If the basis for relief under this section may have
98 10 been a violation of section 502.509, subsection 4; and if the
98 11 customer is a purchaser, an offer to pay as specified in
98 12 paragraph "b"; or, if the customer is a seller, an offer to
98 13 tender or to pay as specified in paragraph "c".

98 14 e. If the basis for relief under this section may have
98 15 been a violation of section 502.509, subsection 3, an offer to
98 16 reimburse in cash the consideration paid for the advice and
98 17 interest at the legal rate from the date of payment.

98 18 f. If the basis for relief under this section may have
98 19 been a violation of section 502.509, subsection 6, an offer to
98 20 reimburse in cash the consideration paid for the advice, the
98 21 amount of any actual damages that may have been caused by the
98 22 conduct, and interest at the legal rate from the date of the
98 23 violation causing the loss.

98 24 2. The offer under subsection 1 states that it must be
98 25 accepted by the purchaser, seller, or recipient of investment
98 26 advice within thirty days after the date of its receipt by the
98 27 purchaser, seller, or recipient of investment advice or any
98 28 shorter period, of not less than three days, that the
98 29 administrator, by order, specifies.

98 30 3. The offeror has the present ability to pay the amount
98 31 offered or to tender the security under subsection 1.

98 32 4. The offer under subsection 1 is delivered to the
98 33 purchaser, seller, or recipient of investment advice, or sent
98 34 in a manner that ensures receipt by the purchaser, seller, or
98 35 recipient of investment advice.

99 1 5. The purchaser, seller, or recipient of investment
99 2 advice that accepts the offer under subsection 1 in a record
99 3 within the period specified under subsection 2 is paid in
99 4 accordance with the terms of the offer.

99 5 If the basis for relief under this section alleges a
99 6 violation of section 502.509 which employed a device, scheme,
99 7 or artifice to defraud, made an untrue statement of a material
99 8 fact necessary in order to make the statement made, in light
99 9 of the circumstances under which it was made, not misleading,
99 10 or engaged in an act, practice, or course of business that
99 11 operated or would operate as a fraud or deceit on another
99 12 person, the offer is filed with the administrator ten business
99 13 days before the offering and conforms in form and content with
99 14 a rule prescribed by the administrator.

99 15 ARTICLE 6

99 16 ADMINISTRATION AND JUDICIAL REVIEW

99 17 Sec. 50. Section 502.601, Code Supplement 2003, is amended
99 18 by striking the section and inserting in lieu thereof the
99 19 following:

99 20 502.601 ADMINISTRATION.

99 21 1. ADMINISTRATION. This chapter shall be administered by
99 22 the commissioner of insurance of this state. The
99 23 administrator shall appoint a deputy administrator who shall
99 24 be exempt from the merit system provisions of chapter 8A,
99 25 subchapter IV. The deputy administrator is the principal
99 26 operations officer of the securities bureau of the insurance
99 27 division of the department of commerce. The deputy
99 28 administrator is responsible to the administrator for the
99 29 routine administration of this chapter and the management of

99 30 the securities bureau. In the absence of the administrator,
99 31 whether because of vacancy in the office, by reason of
99 32 absence, physical disability, or other cause, the deputy
99 33 administrator shall be the acting administrator and shall, for
99 34 that period, have and exercise the authority conferred upon
99 35 the administrator. The administrator may by order delegate to
100 1 the deputy administrator any or all of the functions assigned
100 2 to the administrator under this chapter. The administrator
100 3 shall employ officers, attorneys, accountants, and other
100 4 employees as needed for the administration of the chapter.

100 5 2. UNLAWFUL USE OF RECORDS OR INFORMATION. It is unlawful
100 6 for the administrator or an officer, employee, or designee of
100 7 the administrator to use for personal benefit or the benefit
100 8 of others records or other information obtained by or filed
100 9 with the administrator that are not public under section
100 10 502.607, subsection 2. This chapter does not authorize the
100 11 administrator or an officer, employee, or designee of the
100 12 administrator to disclose the record or information, except in
100 13 accordance with section 502.602, section 502.607, subsection
100 14 3, or section 502.608.

100 15 3. NO PRIVILEGE OR EXEMPTION CREATED OR DIMINISHED. This
100 16 chapter does not create or diminish a privilege or exemption
100 17 that exists at common law, by statute or rule, or otherwise.

100 18 4. INVESTOR EDUCATION. The administrator may develop and
100 19 implement investor education initiatives to inform the public
100 20 about investing in securities, with particular emphasis on the
100 21 prevention and detection of securities fraud. In developing
100 22 and implementing these initiatives, the administrator may
100 23 collaborate with public and nonprofit organizations with an
100 24 interest in investor education. The administrator may accept
100 25 a grant or donation from a person that is not affiliated with
100 26 the securities industry or from a nonprofit organization,
100 27 regardless of whether the organization is affiliated with the
100 28 securities industry, to develop and implement investor
100 29 education initiatives. This subsection does not authorize the
100 30 administrator to require participation or monetary
100 31 contributions of a registrant in an investor education
100 32 program.

100 33 5. THE SECURITIES INVESTOR EDUCATION AND TRAINING FUND. A
100 34 securities investor education and training fund is created in
100 35 the state treasury under the control of the administrator to
101 1 provide moneys for the purposes specified in subsection 4.
101 2 All moneys received by the state by reason of civil penalties
101 3 pursuant to this chapter shall be deposited in the securities
101 4 investor education and training fund. Notwithstanding section
101 5 12C.7, interest or earnings on moneys deposited into the fund
101 6 shall be credited to the fund. Notwithstanding section 8.33,
101 7 unencumbered or unobligated moneys remaining in the fund shall
101 8 not revert but shall be available for expenditure for the
101 9 following fiscal year. However, if, on June 30, unencumbered
101 10 or unobligated moneys remaining in the fund exceed two hundred
101 11 thousand dollars, moneys in excess of that amount shall revert
101 12 to the general fund of the state in the same manner as
101 13 provided in section 8.33.

101 14 Sec. 51. Section 502.602, Code 2003, is amended by
101 15 striking the section and inserting in lieu thereof the
101 16 following:

101 17 502.602 INVESTIGATIONS AND SUBPOENAS.

101 18 1. AUTHORITY TO INVESTIGATE. The administrator may do any
101 19 of the following:

101 20 a. Conduct public or private investigations within or
101 21 outside of this state which the administrator considers
101 22 necessary or appropriate to determine whether a person has
101 23 violated, is violating, or is about to violate this chapter or
101 24 a rule adopted or order issued under this chapter, or to aid
101 25 in the enforcement of this chapter or in the adoption of rules
101 26 and forms under this chapter.

101 27 b. Require or permit a person to testify, file a
101 28 statement, or produce a record, under oath or otherwise as the
101 29 administrator determines, as to all the facts and
101 30 circumstances concerning a matter to be investigated or about
101 31 which an action or proceeding is to be instituted.

101 32 c. Notwithstanding section 502.607, subsection 2, publish
101 33 a record concerning an action, proceeding, or an investigation
101 34 under, or a violation of, this chapter or a rule adopted or
101 35 order issued under this chapter if the administrator
102 1 determines it is necessary or appropriate in the public
102 2 interest and for the protection of investors.

102 3 2. ADMINISTRATOR POWERS TO INVESTIGATE. For the purpose
102 4 of an investigation under this chapter, the administrator or
102 5 the administrator's designated officer may administer oaths

102 6 and affirmations, subpoena witnesses, seek compulsion of
102 7 attendance, take evidence, require the filing of statements,
102 8 and require the production of any records that the
102 9 administrator considers relevant or material to the
102 10 investigation, all of which may be enforced pursuant to
102 11 chapter 17A.

102 12 3. PROCEDURE AND REMEDIES FOR NONCOMPLIANCE. If a person
102 13 does not appear or refuses to testify, file a statement,
102 14 produce records, or otherwise does not obey a subpoena as
102 15 required by the administrator under this chapter, the
102 16 administrator may apply to district court or a court of
102 17 another state to enforce compliance. The court may do any of
102 18 the following:

- 102 19 a. Hold the person in contempt.
- 102 20 b. Order the person to appear before the administrator.
- 102 21 c. Order the person to testify about the matter under
102 22 investigation or in question.
- 102 23 d. Order the production of records.
- 102 24 e. Grant injunctive relief, including restricting or
102 25 prohibiting the offer or sale of securities or the providing
102 26 of investment advice.
- 102 27 f. Impose a civil penalty of an amount not to exceed a
102 28 maximum of five thousand dollars for a single violation or
102 29 five hundred thousand dollars for more than one violation.
- 102 30 g. Grant any other necessary or appropriate relief.

102 31 4. APPLICATION FOR RELIEF. This section does not preclude
102 32 a person from applying to district court or a court of another
102 33 state for relief from a request to appear, testify, file a
102 34 statement, produce records, or obey a subpoena.

102 35 5. USE IMMUNITY PROCEDURE. An individual is not excused
103 1 from attending, testifying, filing a statement, producing a
103 2 record or other evidence, or obeying a subpoena of the
103 3 administrator under this chapter or in an action or proceeding
103 4 instituted by the administrator under this chapter on the
103 5 ground that the required testimony, statement, record, or
103 6 other evidence, directly or indirectly, may tend to
103 7 incriminate the individual or subject the individual to a
103 8 criminal fine, penalty, or forfeiture. If the individual
103 9 refuses to testify, file a statement, or produce a record or
103 10 other evidence on the basis of the individual's privilege
103 11 against self-incrimination, the administrator may apply to the
103 12 district court to compel the testimony, the filing of the
103 13 statement, the production of the record, or the giving of
103 14 other evidence. The testimony, record, or other evidence
103 15 compelled under such an order shall not be used, directly or
103 16 indirectly, against the individual in a criminal case, except
103 17 in a prosecution for perjury or contempt or otherwise failing
103 18 to comply with the order.

103 19 6. ASSISTANCE TO SECURITIES REGULATOR OF ANOTHER
103 20 JURISDICTION. At the request of the securities regulator of
103 21 another state or a foreign jurisdiction, the administrator may
103 22 provide assistance if the requesting regulator states that it
103 23 is conducting an investigation to determine whether a person
103 24 has violated, is violating, or is about to violate a law or
103 25 rule of the other state or foreign jurisdiction relating to
103 26 securities matters that the requesting regulator administers
103 27 or enforces. The administrator may provide the assistance by
103 28 using the authority to investigate and the powers conferred by
103 29 this section as the administrator determines is necessary or
103 30 appropriate. The assistance may be provided without regard to
103 31 whether the conduct described in the request would also
103 32 constitute a violation of this chapter or other law of this
103 33 state if occurring in this state. In deciding whether to
103 34 provide the assistance, the administrator may consider whether
103 35 the requesting regulator is permitted and has agreed to
104 1 provide assistance reciprocally within its state or foreign
104 2 jurisdiction to the administrator on securities matters when
104 3 requested, whether compliance with the request would violate
104 4 or prejudice the public policy of this state, and the
104 5 availability of resources and employees of the administrator
104 6 to carry out the request for assistance.

104 7 Sec. 52. Section 502.603, Code 2003, is amended by
104 8 striking the section and inserting in lieu thereof the
104 9 following:

104 10 502.603 CIVIL ENFORCEMENT.

104 11 1. CIVIL ACTION INSTITUTED BY ADMINISTRATOR. If the
104 12 administrator believes that a person has engaged, is engaging,
104 13 or is about to engage in an act, practice, or course of
104 14 business constituting a violation of this chapter or a rule
104 15 adopted or order issued under this chapter or that a person
104 16 has, is, or is about to engage in an act, practice, or course

104 17 of business that materially aids a violation of this chapter
104 18 or a rule adopted or order issued under this chapter, the
104 19 administrator may maintain an action in the district court to
104 20 enjoin the act, practice, or course of business and to enforce
104 21 compliance with this chapter or a rule adopted or order issued
104 22 under this chapter.

104 23 2. RELIEF AVAILABLE. In an action under this section and
104 24 on a proper showing, the court may do any of the following:

104 25 a. Issue a permanent or temporary injunction, restraining
104 26 order, or declaratory judgment.

104 27 b. Order other appropriate or ancillary relief, which may
104 28 include any of the following:

104 29 (1) Ordering an asset freeze, accounting, writ of
104 30 attachment, writ of general or specific execution, and
104 31 appointment of a receiver or conservator, that may be the
104 32 administrator, for the defendant or the defendant's assets.

104 33 (2) Ordering the administrator to take charge and control
104 34 of a defendant's property, including investment accounts and
104 35 accounts in a depository institution, rents, and profits; to
105 1 collect debts; and to acquire and dispose of property.

105 2 (3) Imposing a civil penalty not to exceed a maximum of
105 3 five thousand dollars for a single violation or five hundred
105 4 thousand dollars for more than one violation; an order of
105 5 rescission, restitution, or disgorgement directed to a person
105 6 that has engaged in an act, practice, or course of business
105 7 constituting a violation of this chapter or the predecessor
105 8 chapter or a rule adopted or order issued under this chapter
105 9 or the predecessor chapter.

105 10 (4) Ordering the payment of prejudgment and postjudgment
105 11 interest.

105 12 c. Order such other relief as the court considers
105 13 appropriate.

105 14 3. NO BOND REQUIRED. The administrator shall not be
105 15 required to post a bond in an action or proceeding under this
105 16 chapter.

105 17 Sec. 53. Section 502.604, Code 2003, is amended by
105 18 striking the section and inserting in lieu thereof the
105 19 following:

105 20 502.604 ADMINISTRATIVE ENFORCEMENT.

105 21 1. ISSUANCE OF AN ORDER OR NOTICE. If the administrator
105 22 determines that a person has engaged, is engaging, or is about
105 23 to engage in an act, practice, or course of business
105 24 constituting a violation of this chapter or a rule adopted or
105 25 order issued under this chapter or that a person has
105 26 materially aided, is materially aiding, or is about to
105 27 materially aid an act, practice, or course of business
105 28 constituting a violation of this chapter or a rule adopted or
105 29 order issued under this chapter, the administrator may do any
105 30 of the following:

105 31 a. Issue an order directing the person to cease and desist
105 32 from engaging in the act, practice, or course of business or
105 33 to take other action necessary or appropriate to comply with
105 34 this chapter.

105 35 b. Issue an order denying, suspending, revoking, or
106 1 conditioning the exemptions for a broker-dealer under section
106 2 502.401, subsection 2, paragraph "a", subparagraph (4) or (6),
106 3 or an investment adviser under section 502.403, subsection 2,
106 4 paragraph "a", subparagraph (3).

106 5 c. Issue an order under section 502.204.

106 6 2. SUMMARY PROCESS. An order under subsection 1 is
106 7 effective on the date of issuance. Upon issuance of the
106 8 order, the administrator shall promptly serve each person
106 9 subject to the order with a copy of the order and a notice
106 10 that the order has been entered. The order must include a
106 11 statement of any civil penalty or costs of investigation the
106 12 administrator will seek, a statement of the reasons for the
106 13 order, and notice that, within fifteen days after receipt of a
106 14 request in a record from the person, the matter will be
106 15 scheduled for a hearing. If a person subject to the order
106 16 does not request a hearing and none is ordered by the
106 17 administrator within thirty days after the date of service of
106 18 the order, the order, including the imposition of a civil
106 19 penalty or requirement for payment of costs of investigation
106 20 sought in the order, becomes final as to that person by
106 21 operation of law. If a hearing is requested or ordered, the
106 22 administrator, after notice of and opportunity for hearing to
106 23 each person subject to the order, may modify or vacate the
106 24 order or extend it until final determination.

106 25 3. PROCEDURE FOR FINAL ORDER. If a hearing is requested
106 26 or ordered pursuant to subsection 2, a hearing must be held
106 27 pursuant to chapter 17A. A final order shall not be issued

106 28 unless the administrator makes findings of fact and
106 29 conclusions of law in a record in accordance with chapter 17A.
106 30 The final order may make final, vacate, or modify the order
106 31 issued under subsection 1.

106 32 4. CIVIL PENALTY. In a final order under subsection 3,
106 33 the administrator may impose a civil penalty up to an amount
106 34 not to exceed a maximum of five thousand dollars for a single
106 35 violation or five hundred thousand dollars for more than one
107 1 violation.

107 2 5. COSTS. In a final order, the administrator may charge
107 3 the actual cost of an investigation or proceeding for a
107 4 violation of this chapter or a rule adopted or order issued
107 5 under this chapter.

107 6 6. FILING OF CERTIFIED FINAL ORDER WITH COURT == EFFECT OF
107 7 FILING. If a petition for judicial review of a final order is
107 8 not filed in accordance with section 502.609, the
107 9 administrator may file a certified copy of the final order
107 10 with the clerk of a court of competent jurisdiction. The
107 11 order so filed has the same effect as a judgment of the court
107 12 and may be recorded, enforced, or satisfied in the same manner
107 13 as a judgment of the court.

107 14 7. ENFORCEMENT BY COURT == FURTHER CIVIL PENALTY. If a
107 15 person does not comply with an order under this section, the
107 16 administrator may petition a court of competent jurisdiction
107 17 to enforce the order. The court shall not require the
107 18 administrator to post a bond in an action or proceeding under
107 19 this section. If the court finds, after service and
107 20 opportunity for hearing, that the person was not in compliance
107 21 with the order, the court may adjudge the person in civil
107 22 contempt of the order. The court may impose a further civil
107 23 penalty against the person for contempt in an amount not less
107 24 than three thousand dollars but not greater than ten thousand
107 25 dollars for each violation and may grant any other relief the
107 26 court determines is just and proper in the circumstances.

107 27 Sec. 54. Section 502.604A, Code 2003, is amended by
107 28 striking the section and inserting in lieu thereof the
107 29 following:

107 30 502.604A LIMITED LAW ENFORCEMENT AUTHORITY.

107 31 The administrator or the administrator's designee, when
107 32 carrying out the provisions of section 502.603 or 502.604, may
107 33 develop, share, and receive information related to any law
107 34 enforcement purpose, including any criminal investigation.
107 35 The administrator or designee shall not have the authority to
108 1 issue criminal subpoenas or make arrests. The administrator
108 2 or designee shall not be considered a peace officer, including
108 3 as provided in chapter 801.

108 4 Sec. 55. Section 502.605, Code 2003, is amended by
108 5 striking the section and inserting in lieu thereof the
108 6 following:

108 7 502.605 RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS, AND
108 8 HEARINGS.

108 9 1. ISSUANCE AND ADOPTION OF FORMS, ORDERS, AND RULES.

108 10 Pursuant to chapter 17A, the administrator may do any of the
108 11 following:

108 12 a. Issue forms and orders and, after notice and comment,
108 13 may adopt and amend rules necessary or appropriate to carry
108 14 out this chapter and may repeal rules, including rules and
108 15 forms governing registration statements, applications, notice
108 16 filings, reports, and other records.

108 17 b. Define terms, whether or not used in this chapter, but
108 18 those definitions shall not be inconsistent with this chapter.

108 19 c. Classify securities, persons, and transactions and
108 20 adopt different requirements for different classes.

108 21 2. FINDINGS AND COOPERATION. Under this chapter, a rule
108 22 or form shall not be adopted or amended, or an order issued or
108 23 amended, unless the administrator finds that the rule, form,
108 24 order, or amendment is necessary or appropriate in the public
108 25 interest or for the protection of investors and is consistent
108 26 with the purposes intended by this chapter. In adopting,
108 27 amending, and repealing rules and forms, section 502.608
108 28 applies in order to achieve uniformity among the states and
108 29 coordination with federal laws in the form and content of
108 30 registration statements, applications, reports, and other
108 31 records, including the adoption of uniform rules, forms, and
108 32 procedures.

108 33 3. FINANCIAL STATEMENTS. Subject to section 15(h) of the
108 34 Securities Exchange Act and section 222 of the Investment
108 35 Advisers Act of 1940, the administrator may require that a
109 1 financial statement filed under this chapter be prepared in
109 2 accordance with generally accepted accounting principles in
109 3 the United States and comply with other requirements specified

109 4 by rule adopted or order issued under this chapter. A rule
109 5 adopted or order issued under this chapter may establish any
109 6 of the following:

109 7 a. Subject to section 15(h) of the Securities Exchange Act
109 8 and section 222 of the Investment Advisers Act of 1940, the
109 9 form and content of financial statements required under this
109 10 chapter.

109 11 b. Whether unconsolidated financial statements must be
109 12 filed.

109 13 c. Whether required financial statements must be audited
109 14 by an independent certified public accountant.

109 15 4. INTERPRETATIVE OPINIONS. The administrator may provide
109 16 interpretative opinions or issue determinations that the
109 17 administrator will not institute a proceeding or an action
109 18 under this chapter against a specified person for engaging in
109 19 a specified act, practice, or course of business if the
109 20 determination is consistent with this chapter. A rule adopted
109 21 or order issued under this chapter may establish a reasonable
109 22 charge for interpretative opinions or determinations that the
109 23 administrator will not institute an action or a proceeding
109 24 under this chapter.

109 25 5. EFFECT OF COMPLIANCE. A penalty under this chapter
109 26 shall not be imposed for, and liability does not arise from,
109 27 conduct that is engaged in or omitted in good faith believing
109 28 it conforms to a rule, form, or order of the administrator
109 29 under this chapter.

109 30 6. PRESUMPTION FOR PUBLIC HEARINGS. A hearing in an
109 31 administrative proceeding under this chapter must be conducted
109 32 in public unless the administrator for good cause consistent
109 33 with this chapter determines that the hearing will not be so
109 34 conducted.

109 35 Sec. 56. Section 502.606, Code 2003, is amended by
110 1 striking the section and inserting in lieu thereof the
110 2 following:

110 3 502.606 ADMINISTRATIVE FILES AND OPINIONS.

110 4 1. PUBLIC REGISTER OF FILINGS. The administrator shall
110 5 maintain, or designate a person to maintain, a register of
110 6 applications for registration of securities; registration
110 7 statements; notice filings; applications for registration of
110 8 broker-dealers, agents, investment advisers, and investment
110 9 adviser representatives; notice filings by federal covered
110 10 investment advisers that are or have been effective under this
110 11 chapter or the predecessor chapter; notices of claims of
110 12 exemption from registration or notice filing requirements
110 13 contained in a record; orders issued under this chapter or the
110 14 predecessor chapter; and interpretative opinions or no action
110 15 determinations issued under this chapter.

110 16 2. PUBLIC AVAILABILITY. The administrator shall make all
110 17 rules, forms, interpretative opinions, and orders available to
110 18 the public.

110 19 3. COPIES OF PUBLIC RECORDS. The administrator shall
110 20 furnish a copy of a record that is a public record or a
110 21 certification that the public record does not exist to a
110 22 person that so requests. A rule adopted under this chapter
110 23 may establish a reasonable charge for furnishing the record or
110 24 certification. A copy of the record certified or a
110 25 certificate by the administrator of a record's nonexistence is
110 26 prima facie evidence of a record or its nonexistence.

110 27 Sec. 57. Section 502.607, Code 2003, is amended by
110 28 striking the section and inserting in lieu thereof the
110 29 following:

110 30 502.607 PUBLIC RECORDS == CONFIDENTIALITY.

110 31 1. PRESUMPTION OF PUBLIC RECORDS. Except as otherwise
110 32 provided in subsection 2, records obtained by the
110 33 administrator or filed under this chapter, including a record
110 34 contained in or filed with a registration statement,
110 35 application, notice filing, or report, are public records and
111 1 are available for public examination.

111 2 2. NONPUBLIC RECORDS. Notwithstanding chapter 22, the
111 3 following records are not public records and are not available
111 4 for public examination under subsection 1:

111 5 a. A record obtained by the administrator in connection
111 6 with an audit or inspection under section 502.411, subsection
111 7 4, or an investigation under section 502.602.

111 8 b. A part of a record filed in connection with a
111 9 registration statement under sections 502.301 and 502.303
111 10 through 502.305 or a record under section 502.411, subsection
111 11 4, that contains trade secrets or confidential information if
111 12 the person filing the registration statement or report has
111 13 asserted a claim of confidentiality or privilege that is
111 14 authorized by law.

111 15 c. A record that is not required to be provided to the
111 16 administrator or filed under this chapter and is provided to
111 17 the administrator only on the condition that the record will
111 18 not be subject to public examination or disclosure.

111 19 d. A nonpublic record received from a person specified in
111 20 section 502.608, subsection 1.

111 21 e. Any social security number, residential address unless
111 22 used as a business address, and residential telephone number
111 23 unless used as a business telephone number, contained in a
111 24 record that is filed.

111 25 f. A record obtained by the administrator through a
111 26 designee that the administrator determines by rule or order
111 27 has been appropriately expunged from its own records by that
111 28 designee, if the administrator finds that such expungement is
111 29 in the public interest and does not impair investor
111 30 protection.

111 31 3. ADMINISTRATOR DISCRETION TO DISCLOSE. If disclosure is
111 32 for the purpose of a civil, administrative, or criminal
111 33 investigation, action, or proceeding or to a person specified
111 34 in section 502.608, subsection 1, the administrator may
111 35 disclose a record obtained in connection with an audit or
112 1 inspection under section 502.411, subsection 4, or a record
112 2 obtained in connection with an investigation under section
112 3 502.602.

112 4 Sec. 58. Section 502.608, Code 2003, is amended by
112 5 striking the section and inserting in lieu thereof following:

112 6 502.608 UNIFORMITY AND COOPERATION WITH OTHER AGENCIES.

112 7 1. OBJECTIVE OF UNIFORMITY. The administrator shall, in
112 8 its discretion, cooperate, coordinate, consult, and, subject
112 9 to section 502.607, share records and information with the
112 10 securities regulator of another state, Canada, a Canadian
112 11 province or territory, a foreign jurisdiction, the securities
112 12 and exchange commission, the United States department of
112 13 justice, the commodity futures trading commission, the federal
112 14 trade commission, the securities investor protection
112 15 corporation, a self-regulatory organization, a national or
112 16 international organization of securities regulators, a federal
112 17 or state banking and insurance regulator, and a governmental
112 18 law enforcement agency to effectuate greater uniformity in
112 19 securities matters among the federal government, self=
112 20 regulatory organizations, states, and foreign governments.

112 21 2. POLICIES TO CONSIDER. In cooperating, coordinating,
112 22 consulting, and sharing records and information under this
112 23 section and in acting by rule, order, or waiver under this
112 24 chapter, the administrator shall, in its discretion, take into
112 25 consideration in carrying out the public interest, all of the
112 26 following general policies:

112 27 a. Maximizing effectiveness of regulation for the
112 28 protection of investors.

112 29 b. Maximizing uniformity in federal and state regulatory
112 30 standards.

112 31 c. Minimizing burdens on the business of capital
112 32 formation, without adversely affecting essentials of investor
112 33 protection.

112 34 3. SUBJECTS FOR COOPERATION. The cooperation,
112 35 coordination, consultation, and sharing of records and
113 1 information authorized by this section includes all of the
113 2 following:

113 3 a. Establishing or employing one or more designees as a
113 4 central depository for registration and notice filings under
113 5 this chapter and for records required or allowed to be
113 6 maintained under this chapter.

113 7 b. Developing and maintaining uniform forms.

113 8 c. Conducting a joint examination or investigation.

113 9 d. Holding a joint administrative hearing.

113 10 e. Instituting and prosecuting a joint civil or
113 11 administrative proceeding.

113 12 f. Sharing and exchanging personnel.

113 13 g. Coordinating registrations under sections 502.301 and
113 14 502.401 through 502.404 and exemptions under section 502.203.

113 15 h. Sharing and exchanging records, subject to section
113 16 502.607.

113 17 i. Formulating rules, statements of policy, guidelines,
113 18 forms, and interpretative opinions and releases.

113 19 j. Formulating common systems and procedures.

113 20 k. Notifying the public of proposed rules, forms,
113 21 statements of policy, and guidelines.

113 22 l. Attending conferences and other meetings among
113 23 securities regulators, which may include representatives of
113 24 governmental and private sector organizations involved in
113 25 capital formation, deemed necessary or appropriate to promote

113 26 or achieve uniformity.
113 27 m. Developing and maintaining a uniform exemption from
113 28 registration for small issuers, and taking other steps to
113 29 reduce the burden of raising investment capital by small
113 30 businesses.
113 31 Sec. 59. Section 502.609, Code 2003, is amended by
113 32 striking the section and inserting in lieu thereof the
113 33 following:
113 34 502.609 JUDICIAL REVIEW OF ORDERS.
113 35 A final order issued by the administrator under this
114 1 chapter is subject to judicial review in accordance with
114 2 chapter 17A.
114 3 Sec. 60. Section 502.610, Code 2003, is amended by
114 4 striking the section the inserting in lieu thereof the
114 5 following:
114 6 502.610 JURISDICTION.
114 7 1. SALES AND OFFERS TO SELL. Sections 502.301, 502.302,
114 8 502.401, subsection 1, 502.402, subsection 1, 502.403,
114 9 subsection 1, 502.404, subsection 1, 502.501, 502.506,
114 10 502.509, and 502.510 do not apply to a person that sells or
114 11 offers to sell a security unless the offer to sell or the sale
114 12 is made in this state or the offer to purchase or the purchase
114 13 is made and accepted in this state.
114 14 2. PURCHASES AND OFFERS TO PURCHASE. Sections 502.401,
114 15 subsection 1, 502.402, subsection 1, 502.403, subsection 1,
114 16 502.404, subsection 1, 502.501, 502.506, 502.509, and 502.510
114 17 do not apply to a person that purchases or offers to purchase
114 18 a security unless the offer to purchase or the purchase is
114 19 made in this state or the offer to sell or the sale is made
114 20 and accepted in this state.
114 21 3. OFFERS IN THIS STATE. For the purpose of this section,
114 22 an offer to sell or to purchase a security is made in this
114 23 state, whether or not either party is then present in this
114 24 state, if any of the following apply to the offer:
114 25 a. The offer originates from within this state.
114 26 b. The offer is directed by the offeror to a place in this
114 27 state and received at the place to which it is directed.
114 28 4. ACCEPTANCES IN THIS STATE. For the purpose of this
114 29 section, an offer to purchase or to sell is accepted in this
114 30 state, whether or not either party is then present in this
114 31 state, if all of the following apply to the acceptance:
114 32 a. The acceptance is communicated to the offeror in this
114 33 state and the offeree reasonably believes the offeror to be
114 34 present in this state and the acceptance is received at the
114 35 place in this state to which it is directed.
115 1 b. The acceptance has not previously been communicated to
115 2 the offeror, orally or in a record, outside this state.
115 3 5. PUBLICATIONS, RADIO, TELEVISION, OR ELECTRONIC
115 4 COMMUNICATIONS. An offer to sell or to purchase is not made
115 5 in this state when a publisher circulates or there is
115 6 circulated on the publisher's behalf in this state a bona fide
115 7 newspaper or other publication of general, regular, and paid
115 8 circulation that is not published in this state, or that is
115 9 published in this state but has had more than two-thirds of
115 10 its circulation outside this state during the previous twelve
115 11 months or when a radio or television program or other
115 12 electronic communication originating outside this state is
115 13 received in this state. A radio or television program, or
115 14 other electronic communication, is considered as having
115 15 originated in this state if either the broadcast studio or the
115 16 originating source of transmission is located in this state,
115 17 unless any of the following apply:
115 18 a. The program or communication is syndicated and
115 19 distributed from outside this state for redistribution to the
115 20 general public in this state.
115 21 b. The program or communication is supplied by a radio,
115 22 television, or other electronic network with the electronic
115 23 signal originating from outside this state for redistribution
115 24 to the general public in this state.
115 25 c. The program or communication is an electronic
115 26 communication that originates outside this state and is
115 27 captured for redistribution to the general public in this
115 28 state by a community antenna or cable, radio, cable
115 29 television, or other electronic system.
115 30 d. The program or communication consists of an electronic
115 31 communication that originates in this state, but which is not
115 32 intended for distribution to the general public in this state.
115 33 6. INVESTMENT ADVICE AND MISREPRESENTATIONS. Sections
115 34 502.403, subsection 1, 502.404, subsection 1, 502.405,
115 35 subsection 1, 502.502, 502.505, and 502.506 apply to a person
116 1 if the person engages in an act, practice, or course of

116 2 business instrumental in effecting prohibited or actionable
116 3 conduct in this state, whether or not either party is then
116 4 present in this state.

116 5 Sec. 61. Section 502.611, Code 2003, is amended by
116 6 striking the section and inserting in lieu thereof the
116 7 following:

116 8 502.611 SERVICE OF PROCESS.

116 9 1. SIGNED CONSENT TO SERVICE OF PROCESS. A consent to
116 10 service of process required by this chapter must be signed and
116 11 filed in the form required by a rule or order under this
116 12 chapter. A consent appointing the administrator the person's
116 13 agent for service of process in a noncriminal action or
116 14 proceeding against the person, or the person's successor or
116 15 personal representative under this chapter or a rule adopted
116 16 or order issued under this chapter after the consent is filed,
116 17 has the same force and validity as if the service were made
116 18 personally on the person filing the consent. A person that
116 19 has filed a consent complying with this subsection in
116 20 connection with a previous application for registration or
116 21 notice filing need not file an additional consent.

116 22 2. CONDUCT CONSTITUTING APPOINTMENT OF AGENT FOR SERVICE.
116 23 If a person, including a nonresident of this state, engages in
116 24 an act, practice, or course of business prohibited or made
116 25 actionable by this chapter or a rule adopted or order issued
116 26 under this chapter and the person has not filed a consent to
116 27 service of process under subsection 1, the act, practice, or
116 28 course of business constitutes the appointment of the
116 29 administrator as the person's agent for service of process in
116 30 a noncriminal action or proceeding against the person or the
116 31 person's successor or personal representative.

116 32 3. PROCEDURE FOR SERVICE OF PROCESS. Service under
116 33 subsection 1 or 2 may be made by providing a copy of the
116 34 process to the office of the administrator, but it is not
116 35 effective unless all of the following apply:

117 1 a. The plaintiff, which may be the administrator, promptly
117 2 sends notice of the service and a copy of the process, return
117 3 receipt requested, to the defendant or respondent at the
117 4 address set forth in the consent to service of process or, if
117 5 a consent to service of process has not been filed, at the
117 6 last known address, or takes other reasonable steps to give
117 7 notice.

117 8 b. The plaintiff files an affidavit of compliance with
117 9 this subsection in the action or proceeding on or before the
117 10 return day of the process, if any, or within the time that the
117 11 court, or the administrator in a proceeding before the
117 12 administrator, allows.

117 13 4. SERVICE IN ADMINISTRATIVE PROCEEDINGS OR CIVIL ACTIONS
117 14 BY ADMINISTRATOR. Service pursuant to subsection 3 may be
117 15 used in a proceeding before the administrator or by the
117 16 administrator in a civil action in which the administrator is
117 17 the moving party.

117 18 5. OPPORTUNITY TO DEFEND. If process is served under
117 19 subsection 3, the court, or the administrator in a proceeding
117 20 before the administrator, shall order continuances as are
117 21 necessary or appropriate to afford the defendant or respondent
117 22 reasonable opportunity to defend.

117 23 Sec. 62. NEW SECTION. 502.612 SEVERABILITY CLAUSE.

117 24 If any provision of this chapter or its application to any
117 25 person or circumstances is held invalid, the invalidity does
117 26 not affect other provisions or applications of this chapter
117 27 that can be given effect without the invalid provision or
117 28 application, and to this end the provisions of this chapter
117 29 are severable.

117 30 Sec. 63. Sections 502.205 through 502.218, 502.502A,
117 31 502.603A, and 502.604B, Code 2003, are repealed.

117 32 DIVISION II

117 33 TRANSITION PROVISIONS

117 34 Sec. 64. APPLICATION OF ACT TO EXISTING PROCEEDING AND
117 35 EXISTING RIGHTS AND DUTIES.

118 1 1. APPLICABILITY OF PREDECESSOR CHAPTER TO PENDING
118 2 PROCEEDINGS AND EXISTING RIGHTS. The predecessor chapter 502
118 3 exclusively governs all actions or proceedings that are
118 4 pending on the effective date of this Act or may be instituted
118 5 on the basis of conduct occurring before the effective date of
118 6 this Act, but a civil action shall not be maintained to
118 7 enforce any liability under the predecessor chapter unless
118 8 instituted within any period of limitation that applied when
118 9 the cause of action accrued or within five years after the
118 10 effective date of this Act, whichever is earlier.

118 11 2. CONTINUED EFFECTIVENESS UNDER PREDECESSOR CHAPTER. All
118 12 effective registrations under the predecessor chapter 502, all

118 13 administrative orders relating to the registrations, rules,
118 14 statements of policy, interpretative opinions, declaratory
118 15 rulings, no action determinations, and conditions imposed on
118 16 the registrations under the predecessor chapter 502 remain in
118 17 effect while they would have remained in effect if this Act
118 18 had not been enacted. They are considered to have been filed,
118 19 issued, or imposed under chapter 502 as amended by this Act,
118 20 but are exclusively governed by the predecessor chapter 502.

118 21 3. APPLICABILITY OF PREDECESSOR CHAPTER TO OFFERS OR

118 22 SALES. The predecessor chapter 502 exclusively applies to an

118 23 offer or sale made within one year after the effective date of

118 24 this Act pursuant to an offering made in good faith before the

118 25 effective date of this Act on the basis of an exemption

118 26 available under the predecessor chapter 502.

118 27

118 28 DIVISION III

118 29 CONFORMING CHANGES

118 30 Sec. 65. Section 22.7, subsection 42, Code Supplement

118 31 2003, is amended to read as follows:

118 32 42. Information obtained by the commissioner of insurance

118 33 in the course of an investigation as provided in section

118 34 ~~502.603,~~ 523B.87 or 523C.23.

118 35 42A. Information obtained by the commissioner of insurance

119 1 pursuant to section 502.607.

119 2

119 3 Sec. 66. Section 507B.14, unnumbered paragraph 1, Code

119 4 2003, is amended to read as follows:

119 5 When a controlling interest in two or more corporations, at

119 6 least one of which is an insurance company domiciled in this

119 7 state, is held by any person, group of persons, firm, or

119 8 corporation, no exchange of stock, transfer or sale of

119 9 securities, or loan based upon securities of any such

119 10 corporation shall take place between such corporations, or

119 11 between such person, group of persons, firm or corporation and

119 12 such corporations, without first securing the approval of the

119 13 insurance commissioner. If, in the opinion of the insurance

119 14 commissioner, such sale, transfer, exchange, or loan would be

119 15 improper and would work to the detriment of any such insurance

119 16 company, the commissioner shall have the power to prohibit the

119 17 transaction. ~~Any A person, firm, or corporate officer or~~

119 18 ~~director aiding shall not aid such transaction carried out~~

119 19 ~~without approval of the insurance commissioner shall be~~

119 20 ~~deemed. A person, firm, or other corporate officer or~~

119 21 ~~director who willfully violates this provision is guilty of a~~

119 22 ~~class "D" felony and upon conviction punished as provided in~~

119 23 ~~section 502.605. A person, firm, or corporate officer or~~

119 24 ~~director who willfully violates this provision, and when such~~

119 25 ~~violation results in a loss of more than ten thousand dollars,~~

119 26 ~~is guilty of a class "C" felony.~~

119 27

119 28 Sec. 67. Section 536A.22, unnumbered paragraph 2, Code

119 29 2003, is amended to read as follows:

119 30 The total amount of such thrift certificates, installment

119 31 thrift certificates, certificates of indebtedness, promissory

119 32 notes, or similar evidences of indebtedness outstanding and in

119 33 the hands of the general public shall not at any time exceed

119 34 ten times the total amount of capital, surplus, undivided

119 35 profits, and subordinated debt that gives priority to such

120 1 securities of the issuing industrial loan company. The sale

120 2 of such securities is subject to the provisions of chapter 502

120 3 and rules adopted by the superintendent of banking pursuant to

120 4 chapter 17A, ~~and shall not be construed to be exempt by reason~~

120 5 ~~of the provisions of section 502.202, subsection 10, except~~

120 6 ~~that the sale of thrift certificates or installment thrift~~

120 7 ~~certificates which are redeemable by the holder either upon~~

120 8 ~~demand or within a period not in excess of five years are~~

120 9 ~~exempt from sections 502.201 and ~~502.602~~ 502.504.~~

120 10

120 11 DIVISION IV

120 12 EFFECTIVE DATE

120 13 Sec. 68. This Act takes effect January 1, 2005.

120 14

120 15 EXPLANATION

120 16 This bill provides for the regulation of securities.

120 17 Generally, these regulations are designed to protect investors

120 18 from fraudulent sales of securities. Securities law is

120 19 governed under both federal and state law, including the

120 20 Securities Act of 1933 and the Securities Exchange Act of

120 21 1934, and are regulated by the United States securities and

120 22 exchange commission. Iowa has adopted the Iowa uniform

120 23 securities Act, model legislation popularly known as the "Blue

120 24 Sky Law", which was developed by the national conference of

120 25 commissioners on uniform state laws. The Iowa blue sky law is

120 26 codified in Code chapter 502 and regulated by the securities

120 27 bureau of the insurance division of the department of

120 28 commerce.

120 24 The bill substantially revises every provision of Code
120 25 chapter 502. It is based on a new version of model
120 26 legislation as recommended by the commissioners and referred
120 27 to as the uniform securities Act (2002). The new uniform act
120 28 provides state securities regulators authority to investigate,
120 29 prosecute, and sanction individuals and firms that engage in
120 30 securities transactions, in a manner that is consistent with
120 31 current federal law, including with the federal National
120 32 Securities Markets Improvement Act (NSMIA), enacted in 1996,
120 33 which has preempted some state regulatory authority.

120 34 The bill regulates public offerings of securities by
120 35 issuers and control persons must be registered. Second,
121 1 broker-dealers and their agents, and investment advisers and
121 2 their representatives, must be registered. Third, fraud in
121 3 securities transactions is prohibited and enforcement powers
121 4 are given to an appropriate regulatory agency. These powers
121 5 include the ability to make rules and regulations, issue stop
121 6 orders, bring criminal prosecutions, and pursue civil actions
121 7 in court. The 2002 uniform securities Act brings all of these
121 8 regulatory provisions up-to-date with expansion of enforcement
121 9 authority at the state level. Division I of the bill includes
121 10 all of the following:

121 11 ARTICLE 1. This article includes general provisions,
121 12 including definitions, a reference to federal statutes and
121 13 federal agencies, and provisions governing electronic records
121 14 and signatures.

121 15 ARTICLE 2. This article provides exemptions from
121 16 registration of securities, including by providing for both
121 17 exempt securities and exempt transactions and waivers. It
121 18 also provides for the denial, suspension, revocation,
121 19 conditioning, or limitations on exemptions for securities
121 20 regulation.

121 21 ARTICLE 3. This article provides for the registration of
121 22 securities and notice filing of federal covered securities.
121 23 It provides for security registration requirements, notice
121 24 filing, securities registration by coordination or
121 25 qualification, security registration filings, and the denial,
121 26 suspension, or revocation of registrations. It also provides
121 27 for waivers and modifications.

121 28 ARTICLE 3A. This is a special Iowa article which includes
121 29 takeover provisions, including by providing for registration
121 30 requirements, the filing of solicitation materials,
121 31 prohibiting fraudulent, deceptive, or manipulative practices,
121 32 proving limitations of offers and offerors, administration,
121 33 its application to public utilities and financial
121 34 institutions, and the application of securities law.

121 35 ARTICLE 4. This article regulates broker-dealers, agents,
122 1 investment advisers, investment adviser representatives, and
122 2 federal covered investment advisers. The article provides for
122 3 registration requirements and exemptions for broker-dealers,
122 4 agents, and investment adviser representatives. It also
122 5 provides for federal covered investment adviser notice filing
122 6 requirements. The article provides for succession and changes
122 7 in the registration of broker-dealers or investment advisers,
122 8 for the termination of employment or association of agents and
122 9 investment adviser representatives, and for related transfers
122 10 of employment or association. It provides for the withdrawal
122 11 of registration of broker-dealers, agents, investment
122 12 advisers, and investment adviser representatives. It provides
122 13 for filing fees, as well as postregistration requirements.
122 14 Finally, the article provides for the denial, revocation,
122 15 suspension, withdrawal, restriction, condition, or limitation
122 16 of registration.

122 17 ARTICLE 5. This article relates to fraud and liabilities.
122 18 It provides for general fraud and prohibited conduct in
122 19 providing investment advice. It sets forth an evidentiary
122 20 burden, provides for the filing of sales and advertising
122 21 literature, and prohibits misleading filings and
122 22 misrepresentations concerning registration or exemptions. The
122 23 article also provides for qualified immunity, criminal
122 24 penalties, civil liability, and rescission offers.

122 25 ARTICLE 6. This article provides for administration and
122 26 judicial review. It provides generally for administration of
122 27 the bill's provisions, investigations and subpoenas, and civil
122 28 and administrative enforcement. It also includes special
122 29 provisions governing rules, forms, orders, interpretative
122 30 opinions, and hearings. It provides for public records and
122 31 their confidentiality. The article provides for uniformity
122 32 and cooperation with other agencies. It includes provisions
122 33 governing judicial review. The article also provides
122 34 provisions governing jurisdiction, service of process, and

122 35 includes a severability clause.

123 1 Division II of the bill provides for the transition of
123 2 administration. These include applicability of the bill's new
123 3 provisions to existing proceedings and existing rights and
123 4 duties.

123 5 Division III of the bill contains provisions in other
123 6 chapters that conform to changes made by the bill.

123 7 The bill takes effect January 1, 2005.

123 8 LSB 5212DP 80

123 9 da/gg/14